

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE YVONNE GONZALEZ ROGERS, JUDGE

CIARA NEWTON,)	
)	
PLAINTIFF,)	NO. C-17-3961 YGR
)	
VS.)	THURSDAY, DECEMBER 13, 2018
)	
EQUILON ENTERPRISES LLC DBA)	OAKLAND, CALIFORNIA
SHELL OIL PRODUCTS,)	
)	
)	JURY TRIAL
DEFENDANT.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF:

MINNIS & SMALLETS LLP
369 PINE STREET, SUITE 500
SAN FRANCISCO, CALIFORNIA 94104
BY: SONYA L. SMALLETS, ESQUIRE
EVEN R. ETTHINGHOFF, ESQUIRE

DICKSON GEESMAN LLP
1999 HARRISON STREET, SUITE 1945
OAKLAND, CALIFORNIA 94612
BY: EMILY A. NUGENT, ESQUIRE

FOR DEFENDANT:

LAFAYETTE & KUMAGAI LLP
1300 CLAY STREET, SUITE 810
OAKLAND, CALIFORNIA 94612
BY: GARY T. LAFAYETTE, ESQUIRE
BARBARA L. LYONS, ESQUIRE

REPORTED BY:

DIANE E. SKILLMAN, CSR 4909, RPR, FCRR
OFFICIAL COURT REPORTER

I N D E X

PLAINTIFF'S WITNESSES:**PAGE****VOL.****NEWTON, CIARA**

CROSS-EXAMINATION BY MR. LAFAYETTE (RESUMED) 628 4

REDIRECT EXAMINATION BY MS. SMALLETS 666 4

OSTROFE, NORA

DIRECT EXAMINATION BY MR. ETTINGHOFF 674 4

CROSS-EXAMINATION BY MR. LAFAYETTE 697 4

REDIRECT EXAMINATION BY MR. ETTINGHOFF 716 4

JONES, RAY

DIRECT EXAMINATION BY MS. NUGENT 718 4

CROSS-EXAMINATION BY MR. LAFAYETTE 754 4

FISCHER, JEFFREY

DIRECT EXAMINATION BY MS. NUGENT 760 4

CROSS-EXAMINATION BY MR. LAFAYETTE 775 4

REDIRECT EXAMINATION BY MS. NUGENT 778 4

BECK, MICHAEL

DIRECT EXAMINATION BY MS. SMALLETS 780 4

CROSS-EXAMINATION BY MR. LAFAYETTE 792 4

REDIRECT EXAMINATION BY MS. SMALLETS 796 4

<u>PLAINTIFF'S EXHIBITS:</u>	<u>WITHDRAWN</u>	<u>ID.</u>	<u>EVD.</u>	<u>VOL.</u>
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9

778

4

33 (PGS. 106 & 110)

799

4

116A

745

4

201

693

4

207

735

801

4

<u>DEFENDANT'S EXHIBITS:</u>	<u>WITHDRAWN</u>	<u>ID.</u>	<u>EVD.</u>	<u>VOL.</u>
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575

642

4

627

629

4

8:00 A.M.

PROCEEDINGS

PROCEEDINGS

THE COURT: GOOD MORNING.

THE CLERK: CALLING CIVIL ACTION 17-3961 NEWTON
VERSUS EQUILON.

COUNSEL, PLEASE STATE YOUR APPEARANCES.

MS. SMALLETS: GOOD MORNING. SONYA SMALLETS ON
BEHALF OF PLAINTIFF CIARA NEWTON. AND WITH ME IS EMILY NUGENT
AND EVAN ETTINGHOFF.

THE COURT: GOOD MORNING.

MS. SMALLETS: MY CLIENT IS ALSO PRESENT IN THE COURTROOM.

THE COURT: OF COURSE. GOOD MORNING.

MR. LAFAYETTE: GOOD MORNING, YOUR HONOR. GARY LAFAYETTE AND BARBARA LYONS FOR THE DEFENDANT AND CHRISTINE LAYNE FROM EQUILON.

THE COURT: ALL RIGHT.

ANY ISSUES? WE'LL START WITH YOU, MS. SMALLETS.

MS. SMALLETS: WE JUST WANTED TO CIRCLE BACK TO THE STIPULATION ON THE DFEH CHARGE AND MAKE SURE IT WAS CLEAR.

THE COURT: WHAT IS YOUR UNDERSTANDING? I THOUGHT I MADE IT CLEAR, BUT GO AHEAD.

WHAT'S YOUR UNDERSTANDING.

MS. SMALLETS: SO I BELIEVE WE ARE CHEER, BUT I WANT
TO MAKE SURE IT'S CLEAR ON THE RECORD THAT THE DEFENDANT IS

1 AGREEING THAT THE DFEH CHARGE WAS PROPERLY FILED AND SERVED,
2 AND THAT THE ISSUE WITH RESPECT TO EXHAUSTION OF
3 ADMINISTRATIVE REMEDIES IS LIMITED SOLELY TO THE DATE ON WHICH
4 THAT WAS SERVED, AND THAT THERE IS NOT A QUESTION OF THE FACT
5 OF FILING OR SERVICE.

6 **MR. LAFAYETTE:** THAT'S FINE, YOUR HONOR.

7 **THE COURT:** I -- SAY I SO STIPULATE.

8 **MR. LAFAYETTE:** I SO STIPULATE, YOUR HONOR.

9 **THE COURT:** THANK YOU.

10 ALL RIGHT. ANYTHING ELSE?

11 **MS. SMALLETS:** I DON'T THINK SO. NOTHING FURTHER
12 FROM US.

13 **MR. LAFAYETTE:** NO, YOUR HONOR. I JUST ASKED AND
14 THEY'VE SAID THEY ARE GOING TO GIVE ME PHOTOGRAPHS OF THE
15 WITNESSES THAT THEY TOOK EARLIER THROUGHOUT THE TRIAL.

16 **THE COURT:** OH, YEAH. I MEAN, THE ONES THAT WE HAVE
17 BEEN GIVING TO THE JURORS?

18 **MR. LAFAYETTE:** THAT'S RIGHT.

19 **MS. SMALLETS:** WE HAVE PROVIDED -- I THINK WE
20 PROVIDED PAPER COPIES AND MR. LAFAYETTE WAS ASKING FOR
21 ELECTRONIC. WE DON'T HAVE AN OBJECTION PROVIDED THEY DO THE
22 SAME.

23 **THE COURT:** I MEAN IT'S -- PEOPLE USE THEM DURING
24 CLOSINGS.

25 DO I HAVE RESOLUTION ON -- THERE WAS AN OUTSTANDING

1 EXHIBIT ISSUE WITH RESPECT TO 177A VERSUS 177. 177A WAS A
2 PORTION... IT WAS A PORTION, I THINK, OF A MANUAL OR
3 SOMETHING. MAYBE THE COLLECTIVE BARGAINING AGREEMENT?

4 **MS. SMALLETS:** YES.

5 **THE COURT:** MR. LAFAYETTE HAD THOUGHT HE MIGHT WANT
6 THE ENTIRE THING?

7 **MR. LAFAYETTE:** IF I DO, I WILL PUT IT IN IN MY CASE.
8 LET'S JUST GO WITH THAT AND MAKE IT SIMPLE FOR THE JURY RIGHT
9 NOW.

10 **THE COURT:** ALL RIGHT. WE'LL LEAVE IT AS 177A --

11 **THE CLERK:** IT'S JUST I.D.'D AND -- OR ADMITTED?

12 **THE COURT:** NO, I ADMITTED IT.

13 **THE CLERK:** OKAY.

14 **THE COURT:** SO I ADMITTED IT YESTERDAY, SO WHY DON'T
15 WE, SINCE WE HAVE A COUPLE OF MINUTES, GO OVER THAT.

16 YESTERDAY I ADMITTED THE FOLLOWING. LET ME JUST PULL IT
17 UP.

18 8, 10, 12, 15, 19, 101, 102, 61. 143 WAS IDENTIFIED BUT
19 NOT ADMITTED. 150A, 160, 164, 194A, 177A, 147, 148, 149, 152,
20 151, 153, 154, 155, 162, 156, 157, AND 158A. THOSE ARE THE
21 ONES I SHOW.

22 **MS. SMALLETS:** YOUR HONOR, DID YOU LIST ANY BETWEEN
23 150A AND 160?

24 **THE COURT:** I LISTED A NUMBER OF THEM.

25 **MS. SMALLETS:** OKAY, SORRY. I WAS WRITING DOWN THE

1 PREVIOUS ONES.

2 THE COURT: 150A, AND THEN 151, 152, 153, 154, 155,
3 156, 157, AND 158.

4 MS. SMALLETS: OKAY. THANK YOU.

5 THE COURT: OKAY.

6 I NOTICED AN ERROR IN MY PRETRIAL ORDER NO. 1, AND SO YOU
7 WILL SEE ON YOUR TIME SHEETS I CORRECTED THAT BY GIVING YOU
8 THE EXTRA 30 MINUTES FOR YOUR CLOSING THAT WAS NOT PREVIOUSLY
9 REFLECTED. AND THOSE ARE ON YOUR TIME SHEETS.

10 MS. SMALLETS: YOUR HONOR, CAN I ASK A QUESTION ABOUT
11 THAT?

12 SO THE FIVE HOURS AND THREE MINUTES THAT PLAINTIFF HAS
13 LEFT, DOES THAT INCLUDE THE HOUR FOR CLOSING OR WE HAVE FIVE
14 HOURS PLUS THE HOUR FOR CLOSING?

15 THE COURT: YOU WILL SEE THERE IT SAYS, FIVE HOURS
16 AND 33 MINUTES, RIGHT? AND THEN I ANTICIPATE YOUR CLOSING IS
17 GOING TO BE ONE HOUR. THAT'S THE NEXT LINE. YOU SEE THAT?

18 MS. SMALLETS: YES.

19 THE COURT: BUT I'M GIVING YOU 30 MINUTES. YOU SEE
20 THAT?

21 MS. SMALLETS: YES.

22 THE COURT: SO THAT MEANS THAT -- I MEAN, YOU CAN
23 HAVE NOTHING LEFT FOR YOUR CLOSING IF YOU WANT, BUT YOU HAVE
24 FIVE HOURS AND THREE MINUTES FOR EVIDENCE IF YOUR CLOSING IS
25 AT ONE HOUR.

1 IF YOU ARE GOING TO USE MORE THAN AN HOUR, THEN YOU'RE
2 GOING TO HAVE TO TAKE IT OUT OF YOUR FIVE HOURS AND THREE
3 MINUTES THAT ARE LEFT.

4 WITH RESPECT TO MR. LAFAYETTE, HE HAS EIGHT HOURS AND 35
5 MINUTES. I ANTICIPATE HIS CLOSING TO BE ONE HOUR. I AM
6 GIVING HIM 30 MINUTES. SO HE HAS EIGHT HOURS AND FIVE MINUTES
7 LEFT FOR EVIDENCE.

8 OKAY? I DO IT THAT WAY SO THAT YOU GUYS DON'T RUN SHORT
9 AND DON'T HAVE ANY TIME LEFT FOR YOUR CLOSINGS.

10 **MS. SMALLETS:** THANK YOU, YOUR HONOR.

11 **MR. LAFAYETTE:** THANK YOU.

12 **THE COURT:** ALL RIGHT.

13 IN TERMS OF JURY INSTRUCTIONS, I WANT TO START TALKING
14 ABOUT THEM THIS AFTERNOON AFTER MY CRIMINAL CALENDAR.

15 THERE ARE SOME ISSUES. THE MAIN ISSUE THAT I WANT TO
16 DISCUSS IN TERMS OF A... IN TERMS OF ORDER, RELATES TO THE
17 DAMAGES.

18 AS I WAS REVIEWING THEM AGAIN LAST NIGHT, THERE ARE A
19 COUPLE OF AFFIRMATIVE DEFENSES THAT IMPACT DAMAGES. SO THE
20 AFFIRMATIVE DEFENSE THAT IS THE AVOIDABLE CONSEQUENCES
21 DOCTRINE ONLY RELATES TO THE FIRST CLAIM, NOT TO THE SECOND,
22 THIRD -- AND LET ME JUST SAY ON THE RECORD, I RESTRUCTURED
23 THESE TO BE LOGICAL IN TERMS OF MY READING OF THE CLAIMS TO
24 THE JURY. IT DOES NOT, UNFORTUNATELY, TRACK THE COMPLAINT.

25 SO I DON'T USE COUNTS, I USE THE WORD "CLAIMS". AND I

1 WILL PUT ON THE RECORD HOW THAT -- OR I CAN PUT IN WRITING OR
2 SOMETHING FOR ANY APPELLATE REASONS WHAT CLAIM IN THE JURY
3 INSTRUCTION RELATES TO WHAT COUNT IN THE COMPLAINT.

4 BUT I FIRST STRUCTURED THEM ACCORDING TO THE COMPLAINT,
5 AND IT WENT BACK AND FORTH, AND IT JUST WASN'T VERY LOGICAL.
6 I ALWAYS TRY TO MAKE THESE ACCESSIBLE TO THE JURY. SO I
7 REORDERED THEM IN WHAT I THOUGHT WAS A MORE LOGICAL WAY. SO
8 WHEN I'M TALKING ON THE RECORD NOW, I'M TALKING ABOUT THE WAY
9 IN WHICH THEY ARE STRUCTURED CURRENTLY.

10 SO THE AVOIDABLE CONSEQUENCES DOCTRINE ONLY RELATES TO THE
11 FIRST CLAIM FOR HARASSMENT. AND THE NEXT DOCTRINE, THE
12 LIMITATIONS ON REMEDIES DOCTRINE, WHERE THE EMPLOYER WOULD
13 HAVE MADE THE SAME DECISION, THAT INSTRUCTION ONLY RELATES TO
14 THE SECOND AND THIRD CLAIM.

15 AND SO I INTEND TO MODIFY EACH OF THOSE INSTRUCTIONS TO
16 MAKE IT CLEAR FOR THE JURY THAT THE FIRST -- I WOULD SAY THIS
17 INSTRUCTION APPLIES ONLY TO THE FIRST CLAIM. AND THEN WITH
18 THE OTHER ONE, I WOULD SAY THIS INSTRUCTION ONLY APPLIES TO
19 THE SECOND AND THIRD CLAIM.

20 THE QUESTION IS WHETHER ANYBODY THINKS THAT BECAUSE THOSE
21 DEFENSES ARISE OR RELATE ONLY TO SPECIFIC CLAIMS, WHETHER YOU
22 WOULD RATHER HEAR BACK FROM THE JURY FIRST ON THE CLAIM.

23 SAY LET'S SAY THE JURY FINDS FOR THE PLAINTIFF ON
24 SOMETHING -- ON SOME BUT NOT ALL. IF THEY DON'T FIND ON THE
25 FIRST CLAIM, THEN I WOULD NEVER HAVE TO GIVE THAT INSTRUCTION.

1 IF I DON'T -- IF THEY DON'T FIND ON THE SECOND OR THIRD CLAIM,
2 I DON'T EVER HAVE TO GIVE THAT INSTRUCTION.

3 SO EVEN -- SO YOU'LL SEE THAT IN THE ONES THAT I SENT YOU
4 BY EMAIL, THERE WAS A STOP, AND THERE WAS A STOP IN FRONT OF
5 THE DAMAGES SECTION SO I COULD HAVE THIS CONVERSATION WITH
6 YOU.

7 SO DOES ANYBODY HAVE A PERSPECTIVE THAT THEY WOULD LIKE TO
8 SHARE? START WITH THE PLAINTIFF.

9 **MS. SMALLETS:** WE'RE -- WE WERE THINKING WE WOULD
10 WANT THEM GIVEN ALL AT ONCE, BUT WE WOULD....

11 **THE COURT:** THAT'S FINE.

12 I WOULD ALSO SAY THAT I PUT ON THE ONES I SENT YOU,
13 BECAUSE I DID THE STOP EARLIER, I THREW IN THE PUNITIVE
14 SECTION WITH THE DAMAGES. IF I DO THE DAMAGES IN ADVANCE,
15 THEN MY PLAN IS TO STILL SEPARATE OUT THE PUNITIVES IN TERMS
16 OF LIABILITY FIRST. AND THAT HAD TO BE RESTRUCTURED A LITTLE
17 BIT WHEN I WENT BACK TO READ THEM LAST NIGHT, TOO.

18 **MS. SMALLETS:** BUT, YOUR HONOR, WE WOULD ALSO
19 APPRECIATE A MOMENT TO THINK ABOUT IT AND WE'LL CERTAINLY BE
20 PREPARED TO DISCUSS IT THIS AFTERNOON.

21 **THE COURT:** DO YOU HAVE A PERSPECTIVE?

22 **MR. LAFAYETTE:** I AM PROBABLY IN THE SAME BOOT THAT
23 SHE'S IN. PROBABLY DISCUSS IT THIS AFTERNOON.

24 I HAVE AN INITIAL THOUGHT THAT PROBABLY WITH REGARD TO THE
25 AVOIDABLE CONSEQUENCES DOCTRINE, IT SHOULD PROBABLY BE GIVEN

1 AS PART OF THE FIRST -- AS PART OF THE INSTRUCTIONS IN THE
2 FIRST INSTANCE AS OPPOSED TO SENDING THEM BACK AND COMING
3 BACK. THAT'S MY INITIAL THOUGHT. LET ME THINK ABOUT IT SOME.

4 **THE COURT:** AND THAT'S FINE WITH ME. I THINK THAT IF
5 I -- I THINK THAT BY TELLING THEM WHEN I READ THESE, AVOIDABLE
6 CONSEQUENCES THIS ONLY APPLIES TO THE FIRST CLAIM, THAT SHOULD
7 BE CLEAR. AND, AGAIN, THEY GET COPIES OF THESE. AND I'VE GOT
8 ENGINEERS AND BANKERS ON THE JURY SO I'M CONFIDENT THAT THEY
9 WILL FOLLOW THE INSTRUCTIONS AND KNOW HOW TO FOLLOW
10 INSTRUCTIONS.

11 AND THEN WITH RESPECT TO THE LIMITATION, I CAN EASILY SAY
12 THIS ONLY APPLIES TO THE SECOND AND THIRD CLAIM.

13 THEN MY THOUGHT WOULD BE JUST SO THAT, YOU KNOW, YOU'LL
14 HAVE A BREAK SO THAT YOU KNOW WHAT I DID LAST NIGHT THAT IS
15 JUST A LITTLE BIT DIFFERENT FROM WHAT YOU HAVE HERE SO YOU CAN
16 THINK ABOUT IT.

17 THEN I WOULD STOP, RIGHT? SO IF I ADD THE DAMAGES TO THE
18 FIRST SET, I WOULD STOP AFTER THE MAIN DAMAGES AND THEN JUST
19 INSTRUCT ON LIABILITY FOR PUNITIVES. AND I WOULD EVEN CHANGE
20 THAT HEADING. AND I WOULD SAY, EFFECTIVELY, NOW THAT YOU HAVE
21 DECIDED DEFENDANT'S CONDUCT CAUSED CIARA NEWTON'S HARM, YOU
22 MUST DECIDE WHETHER CIARA NEWTON PROVED THAT DEFENDANT ENGAGED
23 IN SUCH CONDUCT WITH MALICE, OPPRESSION, AND FRAUD.

24 I WON'T EVEN MENTION -- THE STANDARD INSTRUCTION HAS A
25 REFERENCE TO DAMAGES UP FRONT. I DON'T EVEN MENTION DAMAGES,

1 IN MY VIEW. ALL I WANT THEM TO FOCUS ON IS THE CONDUCT, DOES
2 THAT CONDUCT RISE TO MALICE, OPPRESSION, AND FRAUD.

3 AND I WOULD ALSO WANT TO ADD AT THE END SOMETHING TO THE
4 EFFECT THAT IN THIS CASE, PLAINTIFF CONTENDS, AND I WANT THE
5 NAMES, WHO YOU CONTEND ARE THE MANAGING AGENTS.

6 SO, PLAINTIFF CONTENDS THAT SO AND SO, MAYBE IT'S BECK,
7 MAYBE IT'S PEREZ -- I DON'T KNOW WHO YOU ARE GOING TO SAY, I
8 HAVE SOME IDEAS -- WHO ARE MANAGING AGENTS, AND IN APPLYING
9 THESE INSTRUCTIONS, YOU MUST EVALUATE EACH PERSON
10 INDEPENDENTLY.

11 I THINK IT IS FAIR AND APPROPRIATE. I THINK THE DEFENSE'S
12 INSTRUCTIONS WENT OVERBOARD AND THEY, IN ADDITION, IGNORED MY
13 SUMMARY JUDGMENT ORDER.

14 I HAVE ALREADY ORDERED THAT SOME OF THESE FOLKS WERE NOT
15 MANAGING AGENTS, SO THEY, YOU KNOW, THEY CAN'T BRING THEIR
16 PUNITIVE DAMAGES CLAIMS BASED UPON SOME OF THESE INDIVIDUALS.

17 SO THAT WOULD HAVE TO BE -- I WOULD AMEND IT IN THAT
18 PARTICULAR WAY TO MAKE SURE THAT THE JURY IS FOCUSED ON THE
19 RIGHT PEOPLE.

20 SO THOSE ARE THE CHANGES THAT I SAW WHEN I REVIEWED THEM
21 LAST NIGHT.

22 **MR. LAFAYETTE:** ONE QUESTION, YOUR HONOR.

23 **THE COURT:** YES.

24 **MR. LAFAYETTE:** IF THE JURY COMES BACK WITH A
25 LIABILITY FINDING, I THINK THAT'S -- THEN THAT'S WHEN YOU

1 WOULD GIVE THEM THE INSTRUCTIONS ON WHETHER OR NOT THERE IS
2 LIABILITY FOR PUNITIVE DAMAGES.

3 **THE COURT:** CORRECT. IF THEY FIND THERE IS LIABILITY
4 FOR PUNITIVES, THEN I WOULD INSTRUCT THEM ON THE MEASURE OF
5 DAMAGES FOR PUNITIVES AND WE WOULD HAVE EVIDENCE ON WHAT THE
6 FINANCIAL CIRCUMSTANCES ARE FOR THE PLAINTIFF; THAT WE WOULD
7 OPEN UP WHAT HAS BEEN FILED UNDER SEAL, AND PER MY ORDER,
8 YOU'VE TOLD ME WHO IT IS, BUT YOU WOULD HAVE TO HAVE SOMEONE
9 BE AVAILABLE TO TESTIFY AS TO THE PARTY -- AS TO THE
10 DEFENDANT'S FINANCIALS.

11 **MR. LAFAYETTE:** I UNDERSTAND THAT. THAT PIECE I'VE
12 GOT. IF THERE IS A FINDING OF LIABILITY AND THEY ARE GOING TO
13 GET THE INSTRUCTIONS ON THE PUNITIVE DAMAGES OR ON THE
14 LIABILITY OF PUNITIVE DAMAGES, DO WE ARGUE A SECOND TIME OR DO
15 WE ARGUE --

16 **THE COURT:** NO, YOU GET TO ARGUE.

17 **MR. LAFAYETTE:** OKAY. SO THAT'S WHEN WE WILL DO THE
18 ARGUMENT --

19 **THE COURT:** ON WHETHER OR NOT THE CONDUCT -- YOU WILL
20 GET TWO SEPARATE MINI ARGUMENTS IN TERMS OF WHETHER OR NOT THE
21 CONDUCT ROSE TO MALICE, OPPRESSION, AND FRAUD.

22 **MR. LAFAYETTE:** ALL RIGHT. AND SO WE WILL NOT ARGUE
23 THE PUNITIVE DAMAGES PIECE DURING THE MAIN CLOSING ARGUMENT --

24 **THE COURT:** CORRECT, BECAUSE YOU WILL HAVE TIME --
25 YOU WILL HAVE TIME AFTERWARDS.

1 **MR. LAFAYETTE:** ALL RIGHT.

2 **THE COURT:** IF THERE IS A FINDING.

3 **MR. LAFAYETTE:** IF THERE IS A FINDING. AND THAT WILL
4 BE BASED UPON THE RECORD WE ARE DEVELOPING NOW FOR THE FINDING
5 OF PUNITIVE DAMAGES.

6 **THE COURT:** OF COURSE, YES.

7 **MR. LAFAYETTE:** OKAY.

8 **THE COURT:** THE ONLY ADDITIONAL EVIDENCE THAT WILL BE
9 TAKEN IS WITH RESPECT TO THE FINANCIALS.

10 **MR. LAFAYETTE:** I UNDERSTAND.

11 **THE COURT:** WHICH I DON'T HAVE IN EVIDENCE AND WHICH
12 WE WILL NOT HAVE UNLESS THERE IS A FINDING OF LIABILITY.

13 **MR. LAFAYETTE:** I UNDERSTAND. THANK YOU, YOUR HONOR.

14 **MS. SMALLETS:** THANK YOU, YOUR HONOR.

15 **THE COURT:** OKAY. SO THINK ABOUT THAT. I HAVE TWO
16 SENTENCINGS THIS AFTERNOON. SO I WOULD HAVE YOU COME BACK AT
17 3:30.

18 **MR. LAFAYETTE:** THAT'S FINE, YOUR HONOR.

19 **THE COURT:** OKAY. WE WILL STAND IN RECESS UNTIL THE
20 JURY GETS HERE.

21 (RECESS TAKEN AT 8:17 A.M.; RESUMED AT 8:28 A.M.)

22 **THE COURT:** ALL RIGHT. LET'S CALL THE JURY IN.
23 MS. NEWTON, YOU CAN GET BACK UP ON THE STAND.

24 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

25 **THE COURT:** GOOD MORNING, EVERYONE. WE ARE BACK ON

1 THE RECORD. THE RECORD WILL REFLECT THAT THE JURY IS HERE.

2 HOW'S EVERYBODY DOING? GOOD? A LITTLE TIRED? YOU ALL
3 LOOK A LITTLE TIRED. I'M A LITTLE TIRED.

4 BUT, MY SON GOT INTO PRINCETON YESTERDAY. SO I'M REALLY,
5 REALLY HAPPY.

6 **MR. LAFAYETTE:** CONGRATULATIONS, YOUR HONOR.

7 **THE COURT:** REALLY HAPPY. GREAT KID. HE'S A GREAT
8 KID. SO I'M HAPPY, BUT ALSO TIRED.

9 SO -- AND TODAY I HAVE SOME TREATS FOR YOU AT YOUR BREAK.
10 SO HOPEFULLY THAT WILL HELP WITH YOUR TIREDNESS. ANYWAY, WE
11 WILL GET THROUGH THIS.

12 OKAY. DON'T MAKE ME UPSET THIS MORNING, MR. LAFAYETTE.
13 MY PATIENCE LEVEL IS HIGHER TODAY BECAUSE I'M HAPPY. BUT,
14 NEVERTHELESS, ONE NEVER KNOWS.

15 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

16 **THE COURT:** MS. NEWTON, YOU UNDERSTAND YOU ARE STILL
17 UNDER OATH?

18 **THE WITNESS:** YES.

19 **THE COURT:** ARE YOU READY?

20 **THE WITNESS:** YES.

21 **THE COURT:** ALL RIGHT. LET'S GO. YOU MAY PROCEED.

22 **CROSS-EXAMINATION RESUMED**

23 **BY MR. LAFAYETTE:**

24 **Q.** GOOD MORNING, MS. NEWTON.

25 **A.** GOOD MORNING.

1 Q. WHEN YOU WERE AT SHELL, DID YOU GET A COPY OF THE SHELL
2 CODE OF CONDUCT?

3 A. I BELIEVE I DID, YES.

4 Q. COULD YOU TAKE A LOOK AT EXHIBIT 26 -- 627?

5 A. OKAY.

6 Q. DO YOU RECOGNIZE THAT AS THE SHELL CODE OF CONDUCT?

7 A. I DON'T RECOGNIZE IT, BUT IT DOES SAY "CODE OF CONDUCT"
8 AND THEY PROBABLY GAVE IT TO US.

9 MR. LAFAYETTE: I WOULD LIKE TO MOVE THIS INTO
10 EVIDENCE, YOUR HONOR.

11 THE COURT: ANY OBJECTION? ANY OBJECTION?

12 MS. SMALLETS: NO OBJECTION.

13 THE COURT: 627 IS ADMITTED.

14 (DEFENDANT'S EXHIBIT 627 RECEIVED IN EVIDENCE)

15 BY MR. LAFAYETTE:

16 Q. AND WHILE YOU WERE AT SHELL, DID YOU GET A COPY OF SHELL'S
17 ANTI-HARASSMENT POLICY?

18 A. MOST LIKELY YES.

19 Q. CAN YOU TAKE A LOOK AT EXHIBIT 626?

20 (DISPLAYED ON SCREEN.)

21 A. OKAY.

22 Q. IS THAT THE POLICY THERE?

23 A. IT DOESN'T LOOK FAMILIAR, BUT WE GOT A COUPLE OF REALLY
24 THICK BIG BINDERS FULL OF PAPERS.

25 Q. OKAY.

1 **A.** SO IT IS POSSIBLE.

2 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE IT INTO
3 EVIDENCE.

4 **MS. SMALLETS:** OBJECTION --

5 **THE COURT:** I CANNOT HEAR YOU.

6 **MS. SMALLETS:** OBJECTION, THE WITNESS SAID IT DOESN'T
7 LOOK FAMILIAR.

8 **THE COURT:** SUSTAINED.

9 **MR. LAFAYETTE:** OKAY.

10 **THE CLERK:** OKAY. I TURNED ON YOUR MIC.

11 **BY MR. LAFAYETTE:**

12 **Q.** LET ME GO BACK TO TALKING ABOUT WHERE WE DROPPED OFF
13 YESTERDAY. I THINK THAT WAS THE FLEXIGAS FLARE ALARM.

14 DO YOU REMEMBER THAT?

15 **A.** I DO REMEMBER THAT. I DON'T KNOW IF WE TALKED ABOUT IT
16 YESTERDAY.

17 **Q.** WITH REGARD TO THE FLEXIGAS, YOU HAD TO DO A RESET ON IT?

18 **A.** YES. SO WE -- YES.

19 **Q.** AND IT WOULD BE ACCURATE THAT YOU FAILED TO DO THE RESET
20 PROPERLY?

21 **A.** NO. IT WOULD BE ACCURATE THAT IT WAS -- IT WAS AN ALARM
22 MEANING IT WAS NOT PUT BACK PROPERLY. AND SO CAMERON TOOK ME
23 TO SHOW ME HOW TO RESET IT PROPERLY, AND TOGETHER WE DID THAT.

24 **MR. LAFAYETTE:** I WOULD LIKE TO READ FROM THE
25 WITNESS'S DEPOSITION TESTIMONY AT PAGE 468, LINES 24 THROUGH

1 25.

2 **THE COURT:** GO AHEAD.

3 **MR. LAFAYETTE:** (READING)

4 "QUESTION: OKAY. DID YOU FAIL TO DO THE RESET?

5 "ANSWER: NO, I FAILED TO DO IT PROPERLY."

6 **BY MR. LAFAYETTE:**

7 **Q.** NOW, WITH REGARD TO THE GATE SWIPES, WHEN YOU COME TO THE
8 REFINERY YOU HAVE TO USE A CARD TO SWIPE IN, RIGHT?

9 **A.** RIGHT.

10 **Q.** DO YOU KNOW WHAT THAT CARD IS CALLED?

11 **A.** A TWIC CARD.

12 **Q.** A WHAT?

13 **A.** T-W-I-C CARD, TWIC.

14 **Q.** TWICE CARD?

15 **A.** I NEVER HEARD IT CALLED A TWICE CARD, BUT TWIC CARD.

16 **Q.** A TWIC CARD.

17 AND IS -- IT'S YOUR UNDERSTANDING THAT THAT'S THE BEST WAY
18 TO DETERMINE WHEN SOMEONE SHOWED UP AND WHEN SOMEONE LEFT THE
19 REFINERY, RIGHT?

20 **A.** I BELIEVE THAT'S THE ONLY OPTION AS THEY DON'T HAVE A TIME
21 CLOCK.

22 **Q.** AND YOU DON'T KNOW OF A BETTER WAY, RIGHT?

23 **A.** A BETTER WAY THAT THEY HAVE AVAILABLE AT --

24 **Q.** YES.

25 **A.** -- AT SHELL MARTINEZ?

1 Q. YES.

2 A. NO.

3 Q. NOW, WHEN YOU WERE -- WHEN YOU CAME BACK FROM YOUR
4 BEREAVEMENT LEAVE, YOU WERE BEHIND, RIGHT?

5 A. I HAD MISSED FOUR OR FIVE DAYS.

6 Q. THAT PUT YOU BEHIND, RIGHT?

7 A. SLIGHTLY.

8 Q. AND JEFF FISCHER SUGGESTED THAT YOU READ THE MATERIAL THAT
9 YOU WEREN'T THERE FOR, CORRECT?

10 A. WELL, WE DIDN'T DO A LOT OF READING. IT WAS MORE LIKE A
11 MAP OF A PROCESS THAT WE HAD FROM THE BEGINNING.

12 Q. TO THE EXTENT THAT THERE WAS READING AND HE SUGGESTED THAT
13 YOU READ THE MATERIAL, THAT WAS APPROPRIATE, WASN'T IT?

14 A. THAT HE SUGGESTED I READ THE MATERIAL?

15 Q. IT WOULD BE WISE FOR YOU TO READ IT, RIGHT?

16 A. IF THERE WAS SOMETHING I MISSED, YES.

17 Q. SO WHEN YOU WERE WITH JEFF FISCHER IN THE TRAINING COURSE,
18 YOU DID ASK HIM QUESTIONS, RIGHT?

19 A. YES.

20 Q. AND DID YOU EVER ASK TO MEET WITH HIM ONE ON ONE?

21 A. I DON'T -- I MAY HAVE ASKED HIM TO WALK ME THROUGH WHEN WE
22 WERE GETTING READY FOR THE WALK THROUGH, BUT OTHER THAN THAT,
23 I DON'T REMEMBER ASKING TO MEET WITH HIM ONE ON ONE.

24 Q. DID YOU EVER ASK TO SIT DOWN WITH HIM AND TALK WITH HIM?

25 A. NO.

1 **MR. LAFAYETTE:** I WOULD LIKE TO READ FROM THE
2 WITNESS'S DEPOSITION TESTIMONY, PAGE 73, LINES 2 THROUGH 4.

3 **THE COURT:** GO AHEAD.

4 **MR. LAFAYETTE:** (READING)

5 "QUESTION: DID YOU EVER ASK TO SIT DOWN WITH HIM AND
6 TALK WITH HIM?

7 "ANSWER: YES."

8 **BY MR. LAFAYETTE:**

9 **Q.** AND WHEN YOU DID ASK HIM TO DO THAT, DID HE SIT DOWN AND
10 TALK WITH YOU?

11 **A.** THAT WAS PRIOR TO THE BEREAVEMENT LEAVE, I THINK.

12 **Q.** DID HE SIT --

13 **A.** SO PRIOR TO THAT WHEN I FELL BEHIND? YES.

14 **Q.** DID HE SIT DOWN AND TALK WITH YOU?

15 **A.** YES, IN THE BEGINNING.

16 **Q.** SO WHENEVER YOU ASKED AT TIMES SIT TOWN AND TALK WITH HIM,
17 HE GAVE YOU THE TIME, DIDN'T HE?

18 **A.** NO.

19 **MR. LAFAYETTE:** I WOULD LIKE TO READ FROM THE
20 WITNESS'S DEPOSITION TESTIMONY, PAGE 73, LINE 7 THROUGH 9.

21 **THE COURT:** GO AHEAD.

22 **MS. SMALLETS:** OBJECTION.

23 **MR. LAFAYETTE:** (READING)

24 "QUESTION" --

25 **THE COURT:** WAIT. WHAT IS THE OBJECTION?

1 **MS. SMALLETS:** THE WITNESS CLARIFIED THAT THE TIMING
2 WAS --

3 **THE COURT:** OVERRULED.

4 **MR. LAFAYETTE:** (READING)

5 "QUESTION: SO WHENEVER YOU ASKED A TIME TO SIT DOWN
6 AND TALK WITH HIM, HE GAVE YOU THE TIME, DIDN'T HE?

7 "ANSWER: YES."

8 **BY MR. LAFAYETTE:**

9 **Q.** NOW, WHEN YOU ASKED HIM TO SIT DOWN AND TALK WITH HIM,
10 WERE YOU DOING IT TO MAKE SURE THAT YOU UNDERSTOOD A
11 PARTICULAR CONCEPT?

12 **A.** YES.

13 **Q.** AND DID HE EXPLAIN THE CONCEPT TO YOU?

14 **A.** IN THE BEGINNING OF TRAINING, YES.

15 **MR. LAFAYETTE:** I WOULD LIKE TO READ FROM THE
16 WITNESS'S DEPOSITION TESTIMONY, PAGE 73, LINES 14 THROUGH 15.

17 **MS. SMALLETS:** YOUR HONOR, WE ASK THAT IT BE READ
18 THROUGH 25.

19 **THE COURT:** YOU CAN READ THROUGH 25.

20 **MR. LAFAYETTE:** THROUGH 25, YOUR HONOR?

21 **THE COURT:** THROUGH 25.

22 **MR. LAFAYETTE:** CAN YOU TAKE ME OFF THE SCREEN,
23 PLEASE?

24 **THE CLERK:** OKAY.

25 (PAUSE IN THE PROCEEDINGS.)

1 **MR. LAFAYETTE:** (READING)

2 "QUESTION: UP UNTIL THE POINT IN TIME WHEN YOU HAD
3 QUESTIONS FOR HIM, OKAY, HE WOULD TAKE THE TIME TO
4 SIT DOWN WITH YOU AND GO OVER THE MATERIAL?

5 "ANSWER: YES. THAT WAS HIS JOB.

6 "QUESTION: AND THAT IS WHAT HE DID?

7 "ANSWER: YES.

8 "QUESTION: WHEN YOUR COLLEAGUES DID THAT, HE DID THE
9 SAME THING WITH THEM, CORRECT, AS FAR AS YOU COULD
10 TELL?"

11 **MS. SMALLETS:** OBJECTION. I DON'T THINK HE IS
12 READING THE PART HE SAID HE WAS GOING TO READ. THROUGH 73?

13 **MR. LAFAYETTE:** 73?

14 **THE COURT:** SO 73, I SAID. YOU ASKED FOR 10
15 THROUGH -- YOU ASKED FOR 14 AND 15, AND I SAID YOU CAN DO IT
16 THROUGH 25.

17 **MR. LAFAYETTE:** I'M SORRY. WHAT I WAS LOOKING AT
18 DIDN'T MATCH UP. I AM SORRY. I APOLOGIZE TO THE COURT.

19 **THE COURT:** IT IS STRICKEN. READ THE RIGHT SECTION.

20 **MR. LAFAYETTE:** I WILL, YOUR HONOR.

21 "QUESTION: AND DID HE EXPLAIN THE CONCEPT TO YOU?

22 "ANSWER: YES.

23 "QUESTION: OKAY. AND DO YOU KNOW IF --

24 QUESTION (SIC): ACTUALLY --

25 **THE COURT:** ANSWER.

1 **MR. LAFAYETTE:** (READING)

2 "ANSWER: ACTUALLY LET ME -- LET ME REWIND BECAUSE
3 THERE WAS ONE POINT IN TIME WHEN I CAME BACK FROM
4 LOSING MY FATHER AND HE SAID, I DON'T HAVE TIME TO
5 CATCH YOU UP. THIS ISN'T FAIR TO THE OTHER STUDENTS.
6 YOU ARE GOING TO HAVE TO CATCH UP ON YOUR EVEN. AND
7 FROM THIS POINT ON HE DIDN'T HAVE TIME, AND HE TOLD
8 ME ON MORE THAN ONE OCCASION THAT HE DIDN'T HAVE
9 TIME."

10 **BY MR. LAFAYETTE:**

11 **Q.** WITH REGARD TO -- DID HE EVER IN YOUR PRESENCE EXPRESS
12 FRUSTRATIONS WHEN YOUR COWORKERS DIDN'T HAVE THE ANSWER?

13 **A.** YES.

14 **Q.** NOW AT SOME POINT YOU SAID HE WHITED OUT SOMETHING ON YOUR
15 PARALLEL LOG?

16 **A.** YES.

17 **Q.** DID YOU GO TO HIM AND ASK HIM WHY?

18 **A.** I ASKED HIM RIGHT AWAY WHY.

19 **Q.** AND DID HE TELL YOU IT WAS BECAUSE HE DID NOT UNDERSTAND
20 THAT THE GUYS WHO HAD SIGNED IT HAD BEEN QUALIFIED TO SIGN OFF
21 ON YOUR PAPERS?

22 **A.** THAT'S WHAT HE SAID. HE SAID THOSE GUYS ARE NOT
23 ACCEPTABLE.

24 **Q.** HE SAID HE DIDN'T UNDERSTAND THAT THEY WERE SMES, RIGHT?

25 **A.** HE DIDN'T USE THE WORD "UNDERSTAND". HE SAID THEY ARE

1 NOT, SAID THEY ARE NOT QUALIFIED TO SIGN YOU OFF.

2 Q. DID HE SAY THEY WERE NOT SMES?

3 A. I THINK HE SAID SOMETHING ABOUT THEM NOT BEING SMES.

4 Q. AS FAR AS YOU KNOW, MR. FISCHER DID NOT HAVE A ROLE,
5 OFFICIAL OR OTHERWISE, IN MAKING A DECISION TO TERMINATE YOU.

6 A. WELL, THE OFFICIAL PAPERWORK, HIS NAME WAS NOT ON THERE.
7 BUT, IN MY OPINION, HE HAD A BIG PART OF IT.

8 MR. LAFAYETTE: OBJECTION --

9 THE COURT: OVERRULED.

10 MR. LAFAYETTE: I WOULD LIKE TO READ FROM PLAINTIFF'S
11 DEPOSITION TESTIMONY, PAGE 252, LINES 21 THROUGH 23.

12 (PAUSE IN THE PROCEEDINGS.)

13 THE COURT: YOU DIDN'T ASK HER FOR HER OPINION THERE,
14 YOU ASKED FOR HER KNOWLEDGE. TWO DIFFERENT THINGS.

15 MR. LAFAYETTE: GO UP TO PAGE 12 -- LINE 12 THROUGH
16 23.

17 MS. SMALLETS: OBJECTION, NOT IMPEACHMENT.

18 (PAUSE IN THE PROCEEDINGS.)

19 THE COURT: NO, I DON'T THINK SO.

20 BY MR. LAFAYETTE:

21 Q. WERE YOU ADVISED THAT JEFF FISCHER DID NOT HAVE THE
22 AUTHORITY TO FIRE YOU?

23 A. NEVER ADVISED BY ANYONE IN PARTICULAR.

24 MR. LAFAYETTE: I WOULD LIKE TO READ FROM THE
25 WITNESS'S DEPOSITION TRANSCRIPT, PAGE 255, LINES 4 THROUGH 8.

A. JULY 22ND, CAN YOU REMIND ME WHAT THE MEETING WAS ABOUT?

1 Q. JULY 22ND, 2016.

2 A. I THINK THIS WAS A MEETING I HAD POSSIBLY WITH THOR AND
3 CAMERON. AND IF THAT'S THE MEETING, SHE WAS NOT THERE.

4 Q. YOU HAD A MEETING WITH THOR?

5 A. NOT THOR, GUY ROZAR.

6 Q. GUY ROZAR. WHO ELSE?

7 A. CAMERON.

8 Q. CAMERON CURRAN. ANYBODY ELSE?

9 A. NICK BACKENS.

10 Q. AND YOU?

11 A. YES, IF THIS IS THE SAME MEETING WITH THAT DATE. IT WAS
12 AFTER THE BAKER TANK.

13 Q. SO JUST TO MAKE SURE, CHRISTINE LAYNE WAS NOT AT THAT
14 MEETING, RIGHT?

15 A. IF WE'RE TALKING ABOUT THE SAME MEETING, SHE WAS NOT
16 THERE.

17 Q. AND NEITHER WAS ERIC PEREZ, RIGHT?

18 A. NO, HE WAS NOT.

19 Q. WOULD IT BE ACCURATE THAT THERE WAS NO COMMENT MADE IN
20 THAT MEETING THAT YOU WERE BEING TREATED DIFFERENTLY
21 SPECIFICALLY BECAUSE YOU'RE A WOMAN?

22 A. I DEFINITELY NEVER SAID I'M BEING TREATED SPECIFICALLY
23 BECAUSE I AM A WOMAN, BUT I DEFINITELY SAID I AM NOT BEING
24 TREATED FAIRLY AND YOU'RE SINGLING ME OUT AND YOU ARE PICKING
25 AND CHOOSING WHAT YOU ARE DOCUMENTING, AND YOU ARE ONLY

1 DOCUMENTING ME. AND I SAID ALL OF THAT.

2 Q. OKAY.

3 A. I DIDN'T THINK --

4 MR. LAFAYETTE: THERE IS NO QUESTION PENDING, YOUR
5 HONOR.

6 THE COURT: SHE IS COMPLETING HER ANSWER. YOU DIDN'T
7 HAVE ONE READY TO GO.

8 MR. LAFAYETTE: OKAY.

9 THE COURT: ARE YOU FINISHED?

10 MR. LAFAYETTE: YES, YOUR HONOR.

11 THE COURT: NO, I'M ASKING HER.

12 THE WITNESS: I TOLD 'EM I WASN'T BEING TREATED
13 CONSISTENTLY WITH THE OTHER GUYS ON MY TEAM.

14 BY MR. LAFAYETTE:

15 Q. I JUST WANT TO MAKE SURE I'M CLEAR.

16 YOU DIDN'T SAY SPECIFICALLY BECAUSE YOU ARE A WOMAN,
17 CORRECT?

18 A. I DIDN'T USE THOSE WORDS, NO.

19 Q. NOW, WHEN YOU WERE WITH MR. FISCHER, WOULD IT BE ACCURATE
20 THAT YOUR COWORKERS ARRIVED EARLIER THAN YOU?

21 A. WHEN WE WERE IN TRAINING ON MANY OCCASIONS THEY ARRIVED
22 VERY EARLY, YES.

23 Q. NOW, YOU TOOK SOME NOTES, DIDN'T YOU?

24 A. AT WHICH POINT IN TIME?

25 Q. THROUGHOUT YOUR TERM OF EMPLOYMENT, YOU TOOK SOME NOTES,

1 RIGHT?

2 **A.** CORRECT.

3 **Q.** AND YOU TOOK SOME NOTES SPECIFICALLY REFERRING TO WHAT YOU
4 CONSIDERED TO BE INEQUALITIES, CORRECT?

5 **A.** I DON'T KNOW. I TOOK A FEW NOTES OF THINGS THAT HAPPENED.

6 **MR. LAFAYETTE:** I'D LIKE TO READ FROM THE WITNESS'S
7 DEPOSITION TESTIMONY. PAGE 633, LINES 11 THROUGH 16.

8 **THE COURT:** OKAY. GO AHEAD.

9 **MR. LAFAYETTE:** (READING)

10 "QUESTION: ARE THE NOTES THAT YOU'VE SHOWN ME TODAY
11 THE ONLY NOTES THAT YOU HAVE THAT YOU'VE TAKEN?

12 "ANSWER: YES.

13 "QUESTION: AND SO IN YOUR MIND, DO YOU CONSIDER
14 THOSE NOTES OF" INEQUALITY (SIC).

15 "ANSWER: YES."

16 **THE COURT:** SHE SAID "EXAMPLES."

17 **MR. LAFAYETTE:** I'M SORRY, YOUR HONOR. I WILL READ
18 OVER.

19 **THE COURT:** YOU DON'T HAVE TO READ OVER. JUST READ
20 IT -- JUST FOCUS WHEN YOU ARE READING.

21 "EXAMPLES, YES." GO AHEAD.

22 **MR. LAFAYETTE:** THANK YOU.

23 **BY MR. LAFAYETTE:**

24 **Q.** I WOULD LIKE YOU TO TAKE A LOOK AT EXHIBIT 575.

25 DO YOU HAVE IT THERE?

1 **A.** YES.

2 **Q.** ARE THOSE YOUR NOTES?

3 **A.** THESE ARE SOME NOTES OF MINE, YES.

4 **Q.** AND THESE ARE THE NOTES THAT YOU SAY SHOW EXAMPLES OF
5 INEQUALITY, RIGHT?

6 **A.** YEAH, THESE ARE SOME EXAMPLES.

7 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE EXHIBIT 575 INTO
8 EVIDENCE, YOUR HONOR.

9 **THE COURT:** ANY OBJECTION?

10 **MS. SMALLETS:** NO OBJECTION.

11 **THE COURT:** ADMITTED.

12 (DEFENDANT'S EXHIBIT 575 RECEIVED IN EVIDENCE)

13 **BY MR. LAFAYETTE:**

14 **Q.** THESE NOTES ARE DATED AUGUST 1, 2016, RIGHT?

15 **A.** RIGHT.

16 **Q.** AND THESE ARE NOTES THAT YOU PERSONALLY WROTE, RIGHT?

17 **A.** LET ME STEP BACK.

18 THESE ARE NOTES THAT I EMAILED ON AUGUST 1ST, 2016, BUT
19 THEY DATE -- THEY HAVE DIFFERENT DATES STARTING IN APRIL --
20 STARTING IN MARCH.

21 **Q.** BUT THESE ARE NOTES YOU SENT TO YOURSELF, RIGHT?

22 **A.** YES.

23 **Q.** AND THESE ARE NOTES THAT YOU SENT TO YOURSELF THE DAY
24 BEFORE YOU HAD THE MEETING WITH ERIC PEREZ AND CHRISTINE
25 LAYNE, CORRECT?

1 **A.** WAS THERE A MEETING AN AUGUST 2ND? YES.

2 **Q.** AND YOU DID NOT GIVE THESE NOTES TO CHRISTINE LAYNE AND
3 ERIC PEREZ, DID YOU?

4 **A.** NO.

5 I VERBALLY WENT OVER THEM WITH THEM, BUT I NEVER HANDED
6 THEM TO THEM.

7 **Q.** AND THERE'S NOTHING IN THOSE NOTES THAT SAYS THAT -- THAT
8 SPECIFICALLY STATES THAT YOU WERE BEING TREATED DIFFERENTLY
9 BECAUSE YOU ARE A WOMAN, IS THERE?

10 **A.** I'M NOT SURE. THERE'S LOTS OF EXAMPLES. I DON'T KNOW IF
11 I EVER USED THOSE WORDS.

12 I DON'T THINK THAT THERE IS. BUT I DEFINITELY FELT I
13 EXPRESSED THAT VERBALLY WITH THEM. THAT'S WHY THEY SAID --

14 **MR. LAFAYETTE:** OBJECTION, YOUR HONOR, IT IS
15 NONRESPONSIVE.

16 **THE COURT:** SUSTAINED.

17 **BY MR. LAFAYETTE:**

18 **Q.** AND THERE IS NOTHING IN ANY OF THE NOTES THAT YOU'VE TAKEN
19 THAT INDICATES THAT YOU EVER SAID THAT YOU WERE BEING TREATED
20 DIFFERENTLY BECAUSE YOU ARE A WOMAN; ISN'T THAT CORRECT?

21 **A.** IT JUST SAYS I'M BEING TREATED DIFFERENTLY THAN THE GUYS.
22 IT DOESN'T SAY BECAUSE I'M A WOMAN.

23 **Q.** MY QUESTION IS, THERE'S NOTHING IN ANY OF YOUR NOTES THAT
24 SPECIFICALLY STATES THAT YOU ARE BEING TREATED DIFFERENTLY
25 BECAUSE YOU ARE A WOMAN.

1 **A.** CORRECT.

2 **Q.** AND YOU'RE NOT AWARE OF ANY DOCUMENTS THAT SAY THAT YOU
3 ARE BEING TREATED DIFFERENTLY BECAUSE YOU ARE A WOMAN, ARE
4 YOU?

5 **MS. SMALLETS:** OBJECTION, VAGUE AND AMBIGUOUS.

6 **THE COURT:** SUSTAINED.

7 **MR. LAFAYETTE:** I COULDN'T HEAR THE OBJECTION, YOUR
8 HONOR.

9 **THE COURT:** VAGUE AND AMBIGUOUS.

10 IT'S AN INCREDIBLY BROAD QUESTION. I SUSTAINED THE
11 OBJECTION.

12 **BY MR. LAFAYETTE:**

13 **Q.** ARE YOU AWARE OF ANY DOCUMENT THAT SHOWS THAT YOU
14 COMPLAINED THAT YOU WERE BEING TREATED DIFFERENTLY BECAUSE YOU
15 ARE A WOMAN?

16 **A.** THE EMAIL THAT CAMERON SENT SAYING I AM PUSHING THE
17 INEQUALITY CARD HARD.

18 **MR. LAFAYETTE:** I WOULD LIKE TO READ FROM THE
19 WITNESS'S DEPOSITION TESTIMONY, PAGE 542 --

20 **THE WITNESS:** I JUST LEARNED ABOUT THAT NOW.

21 **MR. LAFAYETTE:** -- LINES 13 THROUGH 19.

22 **THE COURT:** OKAY.

23 **MR. LAFAYETTE:** (READING)

24 "QUESTION: ARE YOU AWARE OF ANY DOCUMENT THAT SHOWS
25 THAT YOU COMPLAINED THAT YOU WERE BEING TREATED

1 DIFFERENTLY BECAUSE YOU WERE A WOMAN?

2 "ANSWER: I DON'T HAVE THE DOCUMENTS IN FRONT OF ME,
3 BUT OFF THE TOP OF MY HEAD I AM NOT AWARE."

4 **BY MR. LAFAYETTE:**

5 **Q.** IN AUGUST, AS OF THE END OF AUGUST, DID YOU HAVE AN
6 UNDERSTANDING THAT YOUR PROBATIONARY PERIOD WOULD BE COMING
7 UP?

8 **A.** THE PROBATION PERIOD ENDED, I THINK, IN OCTOBER 4TH OR END
9 OF SEPTEMBER.

10 **Q.** SO YOU KNEW IT WAS COMING UP?

11 **A.** YEAH.

12 **Q.** SO I'M GOING TO GO TO THE PROP TEST FOR A SECOND. THE
13 PROP TEST, IS THAT A TEST THAT IS SUPPOSED TO TAKE
14 APPROXIMATELY 15 MINUTES?

15 **A.** I DON'T KNOW HOW LONG IT WAS SUPPOSED TO TAKE. I WATCHED
16 22 PEOPLE TAKE IT, AND EVERYONE TOOK A DIFFERENT AMOUNT OF
17 TIME.

18 **MR. LAFAYETTE:** I WOULD LIKE TO READ FROM THE
19 WITNESS'S DEPOSITION TESTIMONY, PAGE 238, LINES 24 THROUGH 25.

20 (PAUSE IN THE PROCEEDINGS.)

21 **THE COURT:** GO AHEAD.

22 **MR. LAFAYETTE:** (READING)

23 "QUESTION: HOW LONG DOES IT TAKE TO DO THE TEST?

24 "ANSWER: I CAN'T REMEMBER. 15 MINUTES."
25

1 **BY MR. LAFAYETTE:**

2 **Q.** AND WASN'T IT -- ISN'T IT TRUE THAT YOU MADE THE MISTAKE
3 WHERE JEFF FISCHER STOPPED IT WITHIN FIVE TO TWO SECONDS OF
4 YOU STARTING THE TEST?

5 **A.** YEAH, IT FELT LIKE RIGHT IN THE BEGINNING.

6 **Q.** NOW ON AUGUST 29, YOU TALKED ABOUT FINDING A STICKER,
7 RIGHT?

8 **A.** RIGHT.

9 **Q.** BUT NO STICKERS LIKE THAT SHOWED UP AFTER THAT, DID THEY?

10 **A.** NOT THAT I SAW.

11 **Q.** AND NOBODY DID ANYTHING TO YOU AFTER YOU RECEIVED THAT
12 STICKER, CORRECT?

13 **A.** NOBODY DID ANYTHING TO ME AS IN?

14 **Q.** OFFENSIVE LIKE THAT.

15 **A.** NOT DIRECTLY TO ME OTHER THAN JUST KIND OF LAUGHING AND
16 SAYING THEY HAVE TO BE CAREFUL WHAT THEY TALK AROUND ME.

17 AND I GUESS WHEN RICHARD ASKED ME IF IT WAS OFFENSIVE
18 AFTER I ALREADY REPORTED IT, THAT WAS.

19 **MR. LAFAYETTE:** I WOULD LIKE TO READ FROM THE
20 WITNESS'S DEPOSITION TESTIMONY, PAGE 159, LINES 3 THROUGH 8.

21 (PAUSE IN THE PROCEEDINGS.)

22 **THE COURT:** OKAY. THE OBJECTION IS OVERRULED AT
23 LINE 6. GO AHEAD.

24 **MR. LAFAYETTE:** (READING).

25 "QUESTION: IS THERE ANYTHING THAT SOMEBODY SAID OR

1 DID TO YOU AFTER THE STICKER INCIDENT?

2 "ANSWER: NOT THAT I CAN REMEMBER AT THIS TIME."

3 **BY MR. LAFAYETTE:**

4 **Q.** YOU AGREE THAT IF YOU ARE ON PROBATION AND YOU ARE LATE
5 SIX TIMES THAT'S BAD, RIGHT?

6 **A.** YEAH, IF SOMEONE WAS LATE SIX TIMES ON PROBATION IT
7 DOESN'T LOOK GOOD.

8 **Q.** SO ON APRIL 7, YOU HAD A MEETING WITH JEFF AND ERIC PEREZ,
9 CORRECT, ABOUT YOUR TARDIES?

10 **A.** CORRECT.

11 **Q.** AND THEY HAD A CONVERSATION WITH YOU WHERE THEY
12 SPECIFICALLY DISCUSSED THAT YOU WERE LATE 45 MINUTES, RIGHT?

13 **A.** SO, YEAH. THAT WAS THE MARCH 23RD, AFTER MY DAD'S
14 FUNERAL, AND THAT WAS MY FIRST TARDY. AND THEY BROUGHT THAT
15 UP AND NOTIFIED ME OF THAT ONE.

16 AND THEN THEY WENT ON TO TALK ABOUT THE ONE WE WERE
17 ADDRESSING THAT DAY.

18 **Q.** NOW WHAT IS TRACING PIPE?

19 **A.** JUST GOING OUTSIDE AND FOLLOWING THE LINES, KNOWING WHAT'S
20 IN EACH LINE, WHAT'S HAPPENING, WHERE IT'S GOING. BECAUSE
21 THERE'S LOTS OF DIFFERENT PIPES GOING IN DIFFERENT DIRECTION
22 WITH DIFFERENT MATERIAL INSIDE.

23 **Q.** IS THE CONCEPT IF YOU TRACE THE PIPE, YOU KNOW WHERE IT IS
24 COMING FROM AND WHERE IT IS GOING TO?

25 **A.** YES.

1 Q. IS THAT A GOOD WAY TO TRY AND FIGURE OUT WHERE EVERYTHING
2 IS IN THE REFINERY, TRACING THE PIPE?

3 A. IT IS ONE OF THE WAYS.

4 Q. NOW, JEFF FISCHER ASKED YOU TO SPEND TIME TRACING THE
5 PIPE, DIDN'T HE?

6 A. I THINK HE ASKED US ALL TO DO THAT.

7 Q. DID YOU TELL JEFF FISCHER THAT YOU DIDN'T LEARN THAT WAY?

8 A. NO. I TOLD HIM THAT ONE OF THE WAYS I LEARNED BETTER WAS
9 ACTUALLY WITH THE PROCESS MAP. AND I LIKE TO LOOK AT THE
10 PROCESS MAP AND THEN GO OUT, STEP BY STEP AND SEE IT AND
11 COMPARE IT TO THE MAP.

12 MR. LAFAYETTE: I WOULD LIKE TO READ FROM THE
13 WITNESS'S DEPOSITION TESTIMONY, PAGE 426, LINES 11 THROUGH 19.

14 MS. SMALLETS: OBJECTION, NOT IMPEACHING.

15 THE COURT: I AGREE. NOT YET.

16 BY MR. LAFAYETTE:

17 Q. NOW, CAN YOU TAKE A LOOK AT EXHIBIT 61?

18 THE COURT: EXHIBIT 61? IT'S NOT IN HER BINDER.

19 MR. LAFAYETTE: IT'S IN THE PLAINTIFF'S BINDER.

20 THE COURT: OKAY. SO TAKE A LOOK AT THE OTHER
21 BINDER.

22 THE WITNESS: OKAY. I DON'T HAVE IT YET.

23 THE COURT: DOES SHE HAVE THE -- DO YOU HAVE THE
24 PLAINTIFF'S BINDER UP THERE?

25 MS. SMALLETS: LET ME CHECK.

1 **THE COURT:** DO YOU SEE A SECOND BINDER --

2 **MR. LAFAYETTE:** I HAVE A HARD COPY I CAN GIVE TO HER.

3 **THE COURT:** ALL RIGHT. YOU CAN APPROACH.

4 (EXHIBIT HANDED TO WITNESS.)

5 **MS. SMALLETS:** YOUR HONOR, THIS IS THE PLAINTIFF
6 WITNESS'S BINDER. I WILL HAPPILY RETURN IT. I WANTED TO MAKE
7 SURE THERE WEREN'T ANY OF MY NOTES IN IT.

8 **THE COURT:** I CAN'T HEAR YOU.

9 **MS. SMALLETS:** THIS IS THE PLAINTIFF'S WITNESS
10 BLINDER. I AM HAPPY TO RETURN IT.

11 (BINDER HANDED TO WITNESS.)

12 **BY MR. LAFAYETTE:**

13 **Q.** DO YOU RECOGNIZE EXHIBIT 61, MA'AM?

14 **A.** YES.

15 **MR. LAFAYETTE:** I THINK THIS IS IN EVIDENCE.

16 **THE COURT:** I BELIEVE IT IS. I'LL DOUBLE-CHECK. GO
17 AHEAD.

18 **MR. LAFAYETTE:** I'M TRYING TO SHOW IT ON THE SCREEN,
19 YOUR HONOR.

20 (PAUSE IN THE PROCEEDINGS.)

21 **THE COURT:** IT'S IN EVIDENCE.

22 **BY MR. LAFAYETTE:**

23 **Q.** WITH REGARD TO THIS DOCUMENT, THIS IS AN ASSESSMENT THAT
24 YOU SAY YOU GOT FROM MR. METCALF, RIGHT?

25 (DISPLAYED ON SCREEN.)

1 **A.** YES.

2 **Q.** WHEN DID YOU GET IT FROM MR. METCALF?

3 **A.** 240 DAYS.

4 **Q.** 240 DAYS. WHEN YOU GOT IT FROM MR. METCALF, WHAT DID YOU
5 DO WITH THIS?

6 **A.** I KEPT IT.

7 **Q.** YOU KEPT IT.

8 IS THIS THE ONE THAT YOU GOT FROM HIM?

9 **A.** I DON'T KNOW. I WOULD HAVE TO SEE THE ONE THAT THEY
10 CREATED AFTER THEY FIRED ME AND COMPARE THE TWO.

11 **Q.** LET'S TAKE A LOOK.

12 THE ONE YOU ARE TALKING ABOUT HAD BOXES CHECKED ON -- TAKE
13 A LOOK AT THE SECOND PAGE. TAKE A LOOK AT THE SECOND PAGE.

14 THE ONE THAT YOU ARE SAYING IS THE ONE THAT THEY CREATED
15 AFTER THEY FIRED YOU HAD BOTH "YES" AND "NO" CHECKED ON IT,
16 RIGHT?

17 **A.** RIGHT.

18 **Q.** SO THIS IS NOT THAT, IS IT?

19 **A.** I DON'T THINK THAT IT IS.

20 **Q.** SO IT'S YOUR BEST RECOLLECTION AS YOU SIT HERE TODAY, AND
21 THIS IS ONE THAT HAS YOUR INTERNAL BATES STAMP NUMBER, NEWTON
22 00316.

23 DO YOU SEE THAT?

24 **A.** I AM JUST NOT SURE BECAUSE I KNOW THEY WENT AND ADDED
25 COMMENTS, AND I'M NOT SURE WHAT THOSE COMMENTS WERE.

1 Q. I WILL REPRESENT TO YOU THAT THIS IS NOT THAT OTHER
2 DOCUMENT.

3 A. OKAY.

4 Q. I'LL JUST TELL YOU THAT. OKAY?

5 SO NOW THIS IS THE ONE THAT YOU GOT FROM MR. METCALF,
6 RIGHT?

7 A. YES.

8 Q. AND WHEN YOU GOT IT FROM HIM, YOU TOOK IT HOME?

9 A. I EITHER TOOK IT HOME OR PUT IT IN MY LOCKER.

10 Q. OKAY. AND THEN WHAT DID YOU DO WITH IT?

11 A. NOTHING. I THOUGHT I DID -- I DIDN'T DO ANYTHING WITH IT.

12 Q. DID YOU GIVE IT TO YOUR LAWYERS?

13 A. OH, EVENTUALLY, YES.

14 Q. IS THIS THE ONE THAT YOU GOT FROM MR. METCALF THAT YOU
15 GAVE TO YOUR LAWYERS? THAT'S ALL I'M TRYING TO GET TO.

16 A. YOU ARE TELLING ME THAT IT WAS?

17 Q. I'M ASKING YOU.

18 A. I GAVE THEM THE COPY THAT HE GAVE ME, YES.

19 Q. IS THIS THE ONE THAT YOU THINK THAT IS WITH YOUR BATES
20 STAMP NUMBER ON IT?

21 A. YES.

22 Q. ALL RIGHT.

23 NOW, AT SOME POINT IN TIME AFTER THAT, YOU RECEIVED A COPY
24 OF YOUR PERSONNEL FILE, DIDN'T YOU?

25 A. NO. AFTER I RECEIVED THIS I --

1 Q. AFTER YOU WERE TERMINATED OR ABOUT THE TIME YOU WERE
2 TERMINATED, YOU RECEIVED A COPY OF YOUR PERSONNEL FILE DIDN'T
3 YOU?

4 A. NO. I RECEIVED IT EITHER THROUGH THE LAWYER OR THROUGH
5 THE UNION AFTER FILING A GRIEVANCE.

6 Q. OKAY.

7 THE COURT: WHAT'S --

8 MS. SMALLETS: OBJECTION, RELATES TO THE MOTION IN
9 LIMINES. IT'S FINE.

10 THE COURT: NOT QUITE. I THINK THE QUESTION IS DID
11 YOU GET IT -- LET ME ASK.

12 DID YOU GET IT DIRECTLY FROM THE COMPANY?

13 THE WITNESS: THE PD FILE?

14 THE COURT: YOUR WHOLE FILE?

15 THE WITNESS: NOT AT THE POINT THAT THEY FIRED ME.
16 EARLIER I DID.

17 MR. LAFAYETTE: I THINK I CAN HELP. I THINK I CAN
18 FIX IT, YOUR HONOR.

19 THE COURT: ALL RIGHT. GO AHEAD.

20 BY MR. LAFAYETTE:

21 Q. CAN YOU TAKE A LOOK AT EXHIBIT 70.

22 THE COURT: SEVEN ZERO?

23 MR. LAFAYETTE: SEVEN ZERO.

24 THE COURT: WE DON'T THAT --

25 MR. LAFAYETTE: 70A I THINK IS WHAT HAPPENED BECAUSE

1 WE TOOK --

2 MS. SMALLETS: YOUR HONOR --

3 THE COURT: SEVEN ZERO A IS NOT IN ANY OF THE
4 BINDERS.

5 MS. SMALLETS: YOUR HONOR, I THINK THIS MAY BE
6 ADDRESSED BY A POTENTIAL STIPULATION. WE STIPULATE THAT THAT
7 IS THE OFFICIAL COPY OF THE PERSONNEL FILE.

8 LET ME CONFIRM THAT 70A IS THAT THE RIGHT ONE.

9 MR. LAFAYETTE: THE -- I CAN PUT IT ON THE SCREEN
10 BECAUSE IT'S IN EVIDENCE. WHAT I AM GOING TO SHOW IS IN
11 EVIDENCE.

12 THE COURT: OKAY. 70A IS IN EVIDENCE.

13 MR. LAFAYETTE: I WILL PUT IT ON THE SCREEN.

14 THE COURT: ALL RIGHT.

15 (DISPLAYED ON SCREEN.)

16 MR. LAFAYETTE: THIS IS PAGE 301, BATES STAMPED 301
17 OF THE TRANSMITTAL TO MS. NEWTON.

18 "ENCLOSED FOR YOUR INFORMATION" --

19 COURT REPORTER: I'M SORRY?

20 BY MR. LAFAYETTE:

21 Q. DO YOU SEE THE LETTER ON THE SCREEN?

22 (DISPLAYED ON SCREEN.)

23 A. YES.

24 THE COURT: IS THERE A CONCERN, MS. SMALLETS? IF
25 THERE IS, YOU NEED TO SPEAK UP.

1 **MS. SMALLETS:** I AM WAITING FOR THE QUESTION. YES, I
2 BELIEVE SO. I THINK THAT THIS RELATES TO THE MOTIONS IN
3 LIMINE. I BELIEVE THAT WE CAN ADDRESS THIS BY STIPULATING
4 THIS IS THE OFFICIAL COPY OF THE PERSONNEL FILE, WHICH I
5 BELIEVE --

6 **THE COURT:** WHAT IS THE POINT OF THE EXAMINATION?

7 **MR. LAFAYETTE:** I'LL GET THERE, YOUR HONOR. I WANT
8 TO ASK HER FROM 301 --

9 **THE COURT:** SHE DOESN'T HAVE IT.

10 **MR. LAFAYETTE:** -- UP TO 318 IS WHAT --

11 **THE COURT:** DO YOU HAVE A COPY FOR HER TO LOOK AT?
12 SHE DOESN'T HAVE IT IN ANY OF THE BINDERS.

13 (PAUSE IN THE PROCEEDINGS.)

14 **MR. LAFAYETTE:** MAY I APPROACH THE WITNESS, YOUR
15 HONOR?

16 **THE COURT:** YOU MAY.

17 (EXHIBIT HANDED TO WITNESS.)

18 **THE WITNESS:** THANK YOU.

19 **MS. SMALLETS:** YOUR HONOR, I HAVE --

20 **THE CLERK:** CAN YOU -- THE MIC IS RIGHT THERE.

21 **MS. SMALLETS:** YOUR HONOR, I THINK THAT WHAT WE DID
22 TO ADDRESS THE PREVIOUS MOTION IN LIMINE, I THINK HAS NOW
23 CREATED AN AMBIGUITY IN THIS DOCUMENT AND I'M CONCERNED THAT
24 THE TESTIMONY IS GOING TO COME -- IS GOING TO BE INACCURATE
25 BECAUSE OF WHAT THE CHANGES WE MADE TO THIS DOCUMENT EARLIER.

1 **THE COURT:** OKAY. WELL, WE DON'T HAVE -- I
2 UNDERSTAND YOU HAVE A CONCERN. LET'S HEAR A QUESTION. SHE'S
3 LOOKING AT THE DOCUMENT.

4 **MS. SMALLETS:** THE DOCUMENT IS MISSING PAGES.

5 **THE COURT:** I UNDERSTAND IT'S MISSING TWO PAGES AT
6 THE FRONT.

7 **MR. LAFAYETTE:** YES, YOUR HONOR.

8 **THE COURT:** SO, SHE'S LOOKING AT DEFENDANT 301 TO
9 325; IS THAT CORRECT?

10 **MR. LAFAYETTE:** THAT'S CORRECT, YOUR HONOR.

11 **THE COURT:** ALL RIGHT. SHOW HER SEPARATELY, WHICH IS
12 NOT IN EVIDENCE, DEFENDANT'S 299 AND 300. JUST SHOW THEM TO
13 HER.

14 DO YOU HAVE COPIES?

15 **MR. LAFAYETTE:** 299? I'M SORRY.

16 **THE COURT:** THE ORIGINAL EXHIBIT 70 STARTED WITH 299
17 AND 300.

18 **MS. NUGENT:** MAY I?

19 **THE COURT:** YOU MAY. GIVE HER THOSE TWO PAGES.

20 (DOCUMENTS HANDED TO WITNESS)

21 **MR. LAFAYETTE:** I SEE WHAT YOU ARE SAYING.

22 **THE COURT:** THOSE TWO PAGES ARE NOT IN EVIDENCE.

23 **THE WITNESS:** OKAY.

24 **MR. LAFAYETTE:** MAY I APPROACH THE WITNESS AGAIN,
25 YOUR HONOR? THE REST OF THE EXHIBIT IS HERE. I JUST WANT TO

1 APPROACH --

2 **THE COURT:** SO YOU DIDN'T GIVE HER THE WHOLE THING?

3 **MR. LAFAYETTE:** I GUESS I DIDN'T HAVE BATES STAMP
4 312.

5 **THE COURT:** ALL RIGHT. SO WE'LL TAKE THE QUESTION
6 ONE AT A TIME.

7 ACTUALLY, MS. NEWTON, YOU LET ME KNOW WHEN YOU FINISH
8 LOOKING AT ALL THE PAGES. DON'T SAY ANYTHING, JUST TELL ME
9 WHEN YOU FINISH LOOKING AT THEM.

10 **THE WITNESS:** I AM FINISHED.

11 **THE COURT:** WHAT IS YOUR QUESTION?

12 **BY MR. LAFAYETTE:**

13 **Q.** CAN YOU LOOK AT BATES STAMPED PAGE 318 IN THAT EXHIBIT?

14 **A.** OKAY.

15 **Q.** OKAY. YOU UNDERSTAND THAT THESE ARE DOCUMENTS THAT WERE
16 SENT ON OR ABOUT SEPTEMBER 29, 2016, RIGHT?

17 **MS. SMALLETS:** I'M SORRY, I DIDN'T HEAR THE QUESTION.

18 **BY MR. LAFAYETTE:**

19 **Q.** THESE ARE DOCUMENTS THAT YOU RECEIVED AFTER SEPTEMBER 29,
20 2016?

21 **THE COURT:** IT'S DATED SEPTEMBER 28TH.

22 **MR. LAFAYETTE:** THAT'S WHY I SAID "AFTER". AFTER
23 SEPTEMBER 28, 2016, RIGHT?

24 **MS. SMALLETS:** YOUR HONOR --

25 **COURT REPORTER:** EXCUSE ME, COUNSEL. PLEASE USE THE

1 MICROPHONE.

2 **MR. LAFAYETTE:** I WILL REPHRASE MY QUESTION.

3 **THE COURT:** LET ME TALK TO THE TWO OF YOU AT SIDEBAR.

4 **MS. NUGENT:** CAN YOU PLEASE TAKE DOWN THIS DOCUMENT?
5 IT HAS HER SOCIAL SECURITY NUMBER ON IT.

6 (SIDE BAR CONFERENCE HELD; NOT REPORTED.)

7 (SIDEBAR CONCLUDED; PROCEEDINGS HELD IN OPEN COURT.)

8 **THE COURT:** LADIES AND GENTLEMEN, LET'S GO AHEAD AND
9 TAKE A BREAK SO I CAN FIGURE THIS OUT. THAT WAY YOU CAN GO
10 AND STRETCH YOUR LEGS, GO TO THE BATHROOM IF YOU WANT.

11 TAKE A BREAK.

12 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

13 **THE COURT:** THE CLOCK IS TICKING FOLKS. I AM NOT
14 HAPPY ABOUT THIS.

15 GO TO THE MICS AT THIS POINT. I DON'T HAVE A JURY HERE.

16 **MR. LAFAYETTE:** I AM CONCERNED ABOUT THE WITNESS NOW
17 HEARING WHAT I'M ABOUT --

18 **THE COURT:** THE WITNESS IS OUT OF THE ROOM.

19 **MR. LAFAYETTE:** I HAVE TWO DOCUMENTS THAT I COULD
20 SHOW YOU.

21 **THE COURT:** PUT THEM ON THE OVERHEAD. I HAVE THE
22 EXHIBIT ITSELF. GIVE ME A BATES NUMBER.

23 **MR. LAFAYETTE:** I HAVE BOTH OF THE DOCUMENTS, YOUR
24 HONOR.

25 **THE COURT:** I WANT BATES NUMBERS.

1 THERE'S A MIC.

2 **MS. SMALLETS:** I DON'T WANT TO -- MR. LAFAYETTE'S
3 NOTES ARE ON BOTH PODIUMS.

4 **THE COURT:** SOMEONE MOVE HIS BINDER.

5 **MR. LAFAYETTE:** I AM LOOKING AT NEWTON 316, WHICH I
6 JUST ASKED THE WITNESS ABOUT, AND THAT'S THE ONE THAT SHE SAID
7 SHE RECEIVED.

8 **THE COURT:** YOU ASKED HER ABOUT HER OWN DOCUMENT WITH
9 THE NEWTON BATES NUMBER.

10 **MR. LAFAYETTE:** THAT'S THIS ONE HERE (INDICATING).
11 AND THERE'S THE BATES STAMP NUMBER THAT I REFERENCED.

12 **THE COURT:** THEIR EXHIBIT IS EXHIBIT NO. 60?

13 **MR. LAFAYETTE:** THAT'S CORRECT, YOUR HONOR -- 61.

14 **THE COURT:** ALL RIGHT. SO I'M LOOKING AT NEWTON 317
15 OR 316?

16 **MR. LAFAYETTE:** 316.

17 **THE COURT:** I AM LOOKING AT NEWTON 316.

18 **MR. LAFAYETTE:** RIGHT.

19 **THE COURT:** NOW I HAVE YOUR DOCUMENT WHICH IS -- WHAT
20 IS THE COROLLARY, DEFENDANT WHAT?

21 **MR. LAFAYETTE:** THIS IS -- IT IS PLAINTIFF'S
22 EXHIBIT 70A, WHICH IS THE FIRST TWO PAGES REMOVED, AND IT'S
23 DEFENDANT'S BATES STAMP NO. 318.

24 **THE COURT:** ALL RIGHT. SO I HAVE DEFENDANT'S 318 AND
25 NEWTON 316. NOW WHAT'S THE ISSUE?

1 **MR. LAFAYETTE:** BACK IN THE OLD SCHOOL, I WOULD DO
2 THIS (INDICATING) TO COMPARE TWO DOCUMENTS TO SEE IF THEY WERE
3 THE SAME DOCUMENTS. WHAT I'M REALLY FOCUSED ON ARE THESE TWO
4 COPY MARKS RIGHT HERE. THEY ARE THE SAME ON BOTH OF THESE
5 DOCUMENTS. THAT WOULD NOT HAVE BEEN THE CASE IF SHE HAD
6 GOTTEN THE ORIGINAL FROM MR. METCALF. THOSE MARKS WOULDN'T BE
7 THERE.

8 **THE COURT:** YOU ARE GOING TO ASK HER TO COMPARE COPY
9 MARKS?

10 **MR. LAFAYETTE:** I AM, YOUR HONOR.

11 **THE COURT:** YOU CAN ARGUE THAT.

12 **MR. LAFAYETTE:** I AM --

13 **THE COURT:** YOU CAN FIND OUT WHERE IT IS -- WHAT
14 ABOUT --

15 **MR. LAFAYETTE:** IN THE FIRST INSTANCE, I WAS ONLY
16 TRYING AT THE BEGINNING SIMPLY TO HAVE HER IDENTIFY THE TWO
17 DOCUMENTS, YOUR HONOR. THAT'S WHAT I WAS TRYING TO GET DONE.

18 AND I WAS NOT TRYING TO DO ANYTHING WHATSOEVER WITH THE
19 UNION ISSUE. I'M ONLY TRYING TO GET HER TO ACKNOWLEDGE THAT
20 SHE GOT ONE ON ONE DAY AND THE OTHER ONE ON ANOTHER DAY.

21 THAT'S REALLY ALL I WANT TO ESTABLISH HERE. THAT'S IT.

22 **THE COURT:** ALL RIGHT. AND THAT'S ALL THAT YOU WILL
23 ESTABLISH.

24 BRING HER IN.

25 **MS. SMALLETS:** YOUR HONOR, MY CONCERN IS ONCE WE PULL

1 THE UNION PIECE IT MAY BE AMBIGUOUS. SO I WOULD BE PREPARED
2 TO STIPULATE, I THINK THIS WOULD BE SIMPLER, THAT THIS COPY
3 WAS RECEIVED IN OCTOBER. BECAUSE THE SECOND PAGE, WHICH IS
4 NOW THE FIRST PAGE SHE'S LOOKING AT IS TALKING --

5 **THE COURT:** SHE HAS BOTH OF THEM.

6 **MS. SMALLETS:** OKAY. OKAY. THAT'S --

7 **THE COURT:** SHE HAS THE PAGES THAT ARE NOT IN.

8 **MS. SMALLETS:** OKAY.

9 **THE COURT:** ALL RIGHT. COME BACK UP. CALL THE JURY
10 IN. LET'S KEEP MOVING.

11 WHICH IS THE ONE WITH THE TWO MARKS WITH "YES" AND "NO"?

12 **MR. LAFAYETTE:** THOSE ARE COPY MARKS THAT RUN
13 THROUGHOUT EXHIBIT 70 WHEN THEY WERE FAXED AND TRANSMITTED.
14 IF YOU LOOK AT THE --

15 **THE COURT:** WHERE IS THE ONE THAT HAS THE "YES" AND
16 "NO" CHECKED? WHAT'S THE BATES NUMBER?

17 **MR. LAFAYETTE:** I WOULD HAVE -- I DON'T HAVE --

18 **MS. NUGENT:** I BELIEVE THAT IS EXHIBIT 61.

19 **THE COURT:** NO, IT'S NOT 61. 61 HAS JUST THE ONE.
20 THAT'S THE POINT. WHICH IS THE ONE THAT HAS BOTH?

21 **MR. LAFAYETTE:** 161.

22 **THE COURT:** THAT'S HIS POINT. HIS POINT IS THAT THE
23 PERSONNEL FILE, WHICH WAS SENT -- FORGET IT. AT SOME POINT
24 SOMEBODY GET ME AN EXHIBIT NUMBER.

25 **MS. NUGENT:** 65, YOUR HONOR.

1 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

2 **THE COURT:** OKAY. WE ARE BACK ON THE RECORD. THE
3 RECORD WILL REFLECT THE JURY IS HERE AND THE WITNESS.

4 LET'S SEE IF WE CAN GET THROUGH THIS QUICKLY,
5 MR. LAFAYETTE.

6 **MR. LAFAYETTE:** YES, YOUR HONOR.

7 **BY MR. LAFAYETTE:**

8 **Q.** I'LL MAKE THIS QUICK, MA'AM, OKAY?

9 IF YOU HAVE EXHIBIT 61, THAT'S THE ONE THAT YOU SAY THAT
10 YOU RECEIVED DURING THE TIME THAT YOU ARE AN EMPLOYEE AND YOU
11 RECEIVED IT FROM MR. METCALF, RIGHT?

12 **A.** RIGHT.

13 **Q.** AND THAT'S THE ONE THAT YOU SAY YOU ULTIMATELY GAVE TO
14 YOUR LAWYERS, RIGHT?

15 **A.** RIGHT.

16 **Q.** OKAY. NOW TAKE A LOOK AT --

17 **A.** CAN I CLARIFY ONE THING?

18 I HAD THIS GIVEN TO ME BY RICHARD METCALF AND I GAVE
19 EVERYTHING I HAD FROM SHELL TO MY LAWYERS.

20 **Q.** I'M FINE WITH THAT.

21 **A.** OKAY.

22 **Q.** THEN WHAT HAPPENS IS THERE'S SOMETHING THAT IS REFERRED TO
23 AS EXHIBIT 70A. ALL RIGHT?

24 **A.** IN THE BINDER OR IN THIS PILE?

25 **THE COURT:** THAT WAS THE STACK OF DOCUMENTS THAT HE

1 GAVE YOU.

2 **THE WITNESS:** OKAY.

3 **BY MR. LAFAYETTE:**

4 **Q.** I'M GOING TO MAKE THIS VERY SIMPLE.

5 YOU RECEIVED THAT SET OF DOCUMENTS AFTER YOU WERE
6 TERMINATED, RIGHT?

7 **A.** YES.

8 **Q.** ALL RIGHT. THANK YOU.

9 DID YOU MEET WITH NORA OSTROFE?

10 **A.** NO, NOT IN PERSON.

11 **Q.** DID YOU TALK TO HER OVER THE PHONE?

12 **A.** YES.

13 **Q.** DID SHE -- DID YOU TELL HER THAT YOU WERE AWARE THAT
14 REFINERIES WERE HIRING?

15 **A.** I TOLD HER -- I DON'T KNOW IF I TOLD HER THAT OR NOT.

16 **Q.** DID YOU TELL HER THAT YOU WERE NOT APPLYING FOR JOBS AT
17 REFINERIES?

18 **A.** I TOLD HER I JUST STARTED A NEW JOB AT ALASKA AND AT THAT
19 MOMENT I WAS LOOKING INTO THAT JOB.

20 **Q.** DID YOU TELL HER THAT YOU HAD NOT APPLIED FOR JOBS AT
21 REFINERIES?

22 **A.** YES.

23 **Q.** AND YOU PRODUCED HERE EXHIBITS 148 AND 149.

24 IS 148 JUST A COMPILATION OF RÉSUMÉS AND COMMUNICATIONS
25 THAT YOU HAD AS PART OF YOUR JOB SEARCH?

1 **A.** YEAH, IT LOOKS LIKE IT'S SOME OF THE EMAILS THAT I SENT
2 FOR PARTS OF THE JOB SEARCH.

3 **Q.** IS 149 YOUR HANDWRITTEN NOTES RELATING TO YOUR JOB SEARCH?

4 **A.** SOME OF THEM, YES.

5 **Q.** ARE YOU AWARE OF SOME OTHERS SOMEPLACE THAT YOU DIDN'T
6 PRODUCE IN THE LITIGATION?

7 **A.** SOME OTHER NOTES?

8 **Q.** YES, RELATING TO YOUR JOB SEARCH.

9 **A.** NO.

10 **Q.** NOW, JUST A FEW QUESTIONS ABOUT MR. FISCHER.

11 NOW, DID MR. FISCHER, WHEN HE FOUND OUT THAT YOUR FATHER
12 HAD PASSED, DID HE SEND YOU A TEXT MESSAGE STATING:

13 THIS IS JEFF FISCHER FROM SHELL, VERY SORRY FOR BOTH OF
14 YOUR LOSS. WE WILL KEEP CIARA AND FAMILY IN OUR PRAYERS. LET
15 US KNOW IF THERE IS ANYTHING THAT CIARA NEEDS.

16 **A.** I DON'T REMEMBER THAT TEXT, BUT IT SOUNDS LIKE HE SENT IT
17 TO MY HUSBAND. HE PROBABLY DID.

18 **Q.** OKAY. AND THEN DID YOU EXCHANGE TEXT MESSAGES WITH
19 MR. FISCHER RELATING TO YOUR ATTENDANCE?

20 **A.** I DID TEXT HIM THE DAY I WAS ARRIVING LATE.

21 **Q.** OKAY.

22 **A.** TEXT OR CALLED.

23 **Q.** SO ON MARCH 8, DID YOU SEND MR. FISCHER A TEXT MESSAGE
24 ASKING HIM IF YOU COULD TAKE OFF ONE MORE DAY?

25 **A.** I DON'T REMEMBER THAT, BUT THAT'S AROUND THE TIME RIGHT

1 AFTER MY DAD PASSED, SO IT'S POSSIBLE.

2 I DON'T REMEMBER.

3 **Q.** DO YOU RECALL THAT MR. FISCHER TELLING YOU THAT THE PERSON
4 YOU NEEDED TO COMMUNICATE WITH WAS ERIC PEREZ?

5 **A.** YES.

6 **Q.** NOW, DO YOU RECALL ON MARCH 11, GETTING A TEXT MESSAGE
7 FROM MR. FISCHER AT 6:22 A.M. ASKING: CIARA ARE YOU COMING TO
8 WORK TODAY.

9 **A.** I DON'T REMEMBER IT, BUT I THINK WE WERE MAYBE TRYING TO
10 FIGURE OUT WHEN I WAS RETURNING TO WORK. I DON'T REMEMBER.

11 **MR. LAFAYETTE:** MAY I APPROACH THE WITNESS, YOUR
12 HONOR?

13 **THE COURT:** YOU MAY.

14 **MS. SMALLETS:** WHAT EXHIBIT NUMBER IS THIS?

15 **MR. LAFAYETTE:** WHAT IS THE LAST -- CAN WE HAVE THIS
16 MARKED AS EXHIBIT 633 USED TO REFRESH HER RECOLLECTION ONLY
17 AND IMPEACHMENT. JUST TO REFRESH HER RECOLLECTION.

18 **THE COURT:** SHE HASN'T SAID SHE NEEDED HER
19 RECOLLECTION REFRESHED.

20 **BY MR. LAFAYETTE:**

21 **Q.** DO YOU RECALL MR. FISCHER COMMUNICATING WITH YOU AND
22 ASKING YOU WHETHER OR NOT YOU WERE COMING IN?

23 **A.** I REMEMBER COMMUNICATING WITH ERIC AND JEFF TRYING TO
24 FIGURE OUT HOW MUCH TIME I WAS ALLOWED TO HAVE FOR GRIEVE.

25 **Q.** MY QUESTION IS SLIGHTLY DIFFERENT, MA'AM.

1 **A.** I'M SORRY.

2 **Q.** DO YOU RECALL HIM SPECIFICALLY AT 6:22 A.M. TEXTING YOU
3 AND ASKING YOU IF YOU WERE COMING IN?

4 **A.** I DON'T RECALL THAT, BUT IT DOESN'T MEAN IT DIDN'T HAPPEN.

5 **MR. LAFAYETTE:** NOW CAN I SHOW IT TO HER, YOUR HONOR?

6 **MS. SMALLETS:** OBJECTION, THE DOCUMENT IS NOT
7 COMPLETE.

8 **MR. LAFAYETTE:** I AM JUST ASKING IF IT REFRESHES HER
9 RECOLLECTION.

10 **THE COURT:** THEN ASK THE FOUNDATIONAL QUESTION FIRST.

11 **BY MR. LAFAYETTE:**

12 **Q.** WOULD LOOKING AT THE TEXT MESSAGES REFRESH YOUR
13 RECOLLECTION?

14 **A.** IF I SEE THE TEXT MESSAGE AND IT HAS MY PHONE NUMBER, THEN
15 I WOULD ASSUME THAT IT HAPPENED. I DON'T DOUBT THAT IT DID.

16 **THE COURT:** DOESN'T HAVE HER PHONE NUMBER ON IT. AND
17 I DON'T --

18 **MR. LAFAYETTE:** I DON'T WANT TO ASK HER PHONE NUMBER,
19 BUT I CAN ONLY DO THAT WITHOUT PUTTING HER PHONE NUMBER IN THE
20 RECORD BY SHOWING HER THE DOCUMENT WITH THE NUMBER AT THE TOP.

21 **THE COURT:** FIRST OF ALL, THAT IS NOT ON MY EXHIBIT
22 LIST, IS IT?

23 **MR. LAFAYETTE:** NO.

24 **THE COURT:** ALL RIGHT. SHOW HER THOSE TWO PAGES.

25 I WOULD LIKE TO KNOW WHERE THE FULL DOCUMENT IS AND I

1 WOULD LIKE TO KNOW WHY IT IS NOT ON THE LIST.

2 GO AHEAD.

3 (DOCUMENT HANDED TO WITNESS.)

4 **THE COURT:** DOES THAT REFRESH YOUR RECOLLECTION ABOUT
5 ANYTHING?

6 **THE WITNESS:** NOT REALLY BECAUSE THAT WAS JUST THE
7 HARD TIME.

8 **THE COURT:** TURN IT OVER.

9 **BY MR. LAFAYETTE:**

10 **Q.** DO YOU HAVE A RECOLLECTION THAT ON MARCH 21 YOU SENT A
11 TEXT MESSAGE TO MR. FISCHER ADVISING HIM THAT YOU WERE NOT
12 GOING TO BE IN.

13 **A.** YOU'RE ASKING ME IF I SENT THAT MESSAGE?

14 **Q.** YES.

15 **A.** I KNOW MARCH 20TH WAS MY DAD'S FUNERAL, SO I WILL BELIEVE
16 THAT, BUT I DON'T REMEMBER IT.

17 **Q.** WAS THERE A WOMEN'S NETWORK AT THE MARTINEZ REFINERY?

18 **A.** I THINK THERE WAS. THERE WAS LOTS OF DIFFERENT GROUPS,
19 LIKE EXTRA CURRICULAR ACTIVITIES AFTER WORK.

20 **MR. LAFAYETTE:** NO FURTHER QUESTIONS, YOUR HONOR.

21 **THE COURT:** CROSS -- RE-EXAMINATION LIMITED TO THE
22 SCOPE OF MR. LAFAYETTE'S EXAMINATION.

23 **REDIRECT EXAMINATION**

24 **BY MS. SMALLETS:**

25 **Q.** GOOD MORNING, MS. NEWTON.

1 **A.** GOOD MORNING.

2 **Q.** MR. LAFAYETTE ASKED YOU SOME QUESTIONS ABOUT SOME NOTES,
3 AND IT'S EXHIBIT 627 IN YOUR WITNESS BINDER.

4 **A.** DID YOU SAY 27 OR 627?

5 **Q.** 627.

6 **A.** I JUST SEE 197.

7 **Q.** I'M SORRY, IT IS THE OTHER WITNESS BINDER, THE ONE HE GAVE
8 YOU.

9 **THE COURT:** 27 WAS NOT ADMITTED. IT'S THE LAST ONE
10 IN YOUR BINDER.

11 **MS. SMALLETS:** IT'S 575. I AM SORRY.

12 **THE WITNESS:** OKAY.

13 **BY MS. SMALLETS:**

14 **Q.** DO YOU HAVE THAT?

15 **A.** YES.

16 **Q.** DO YOU KNOW WHAT THESE ARE?

17 **THE COURT:** I CAN'T HEAR YOU.

18 **THE WITNESS:** THEY ARE NOTES.

19 **BY MS. SMALLETS:**

20 **Q.** AND DID YOU TAKE THESE NOTES?

21 **A.** YES.

22 **Q.** WHAT WAS THE PURPOSE FOR WHICH YOU TOOK THESE NOTES?

23 **A.** I WAS JUST MAKING NOTES OF THINGS THAT HAD HAPPENED THAT I
24 WANTED TO SHARE WITH ERIC AND CHRISTINE.

25 **Q.** DID YOU WRITE -- DID YOU RECORD EVERYTHING THAT HAPPENED

1 TO YOU AT THE REFINERY?

2 **A.** NO.

3 **Q.** WHO DID YOU WRITE THE NOTES FOR?

4 **A.** MYSELF.

5 **Q.** MR. LAFAYETTE ASKED YOU ABOUT A MEETING WITH JEFF FISCHER
6 AND ERIC PEREZ IN WHICH YOU TALKED ABOUT THE APRIL 7TH TARDY.
7 I WOULD LIKE TO CLARIFY A FEW THINGS ABOUT THAT.

8 AT ANY TIME DURING THE TIME THAT YOU WORKED FOR SHELL, DID
9 SHELL TELL YOU THAT THEY HAD DETERMINED THAT YOU -- WHETHER OR
10 NOT YOU WERE TARDY ON APRIL 7TH, THE DAY IN YOUR PD LOG?

11 **A.** NO.

12 **Q.** DURING THE TIME THAT YOU WORKED AT SHELL, DID ANYONE TELL
13 YOU THAT SHELL HAD MADE A DETERMINATION THAT YOU WERE TARDY ON
14 THE DAY AFTER APRIL 8TH?

15 **A.** NO.

16 **Q.** DURING THE TIME THAT YOU WORKED FOR SHELL, DID ANYONE ASK
17 YOU TO PROVIDE -- ABOUT WHAT HAPPENED -- WHAT WAS GOING ON
18 APRIL 8TH?

19 **A.** NO.

20 **Q.** DO YOU RECALL YESTERDAY WHEN MR. LAFAYETTE ASKED YOU ABOUT
21 THE SIZE OF THE SULFURIC ACID SPILL?

22 **A.** YES.

23 **Q.** AND HE READ A PORTION FROM YOUR DEPOSITION WHERE YOU
24 TALKED ABOUT A FEW DROPS OF ACID; DO YOU RECALL THAT?

25 **A.** YES.

1 Q. I WOULD LIKE TO ASK A FEW CLARIFYING QUESTIONS.

2 WHEN YOU WENT OUT TO LOOK AT THE SPILL, WAS THERE A
3 PARTICULAR LOCATION WHERE THERE WERE A FEW DROPS OF ACID?

4 A. YEAH, THE FEW DROPS OF ACID WERE ON THE SIGHT GLASS.

5 Q. WAS THERE A LOCATION -- ANY OTHER LOCATIONS WHERE ACID WAS
6 PRESENT?

7 A. THEN ON THE SIDE WHERE IT HAD OVERFILLED WERE THE TWO, NOT
8 PUDDLES, BUT WET SPOTS, CIRCULAR WET SPOTS.

9 Q. MR. LAFAYETTE ALSO ASKED YOU EARLIER ABOUT WHAT YOU
10 THOUGHT THE PROPER RESPONSE WOULD BE TO THINGS LIKE INCIDENTS.
11 I WOULD LIKE TO CLARIFY THAT A LITTLE BIT.

12 IF THERE IS AN INCIDENT IN THE REFINERY THAT LEADS TO LOSS
13 OF CONTAINMENT OR SOMEONE COULD POTENTIALLY BE INJURED, WHAT
14 DO YOU THINK THE APPROPRIATE RESPONSE TO THAT IS?

15 A. I THINK THE APPROPRIATE RESPONSE IS TO FOLLOW THE
16 PROCEDURES. AND SO THERE'S TWO DIFFERENT KINDS OF WRITE-UPS
17 AND THERE'S ZERO TO SIXTY WRITE-UP, WHICH IS NONDISCIPLINARY,
18 BUT IT IS TO RECORD MISTAKES SO THAT THEY CAN HAPPEN LESS
19 FREQUENTLY.

20 AND THEN THERE'S THE PD LOG WHICH IS NOT -- WHICH IS A
21 POSITIVE AND NOT SUPPOSED TO BE DISCIPLINE. BUT IT ULTIMATELY
22 REALLY IS DISCIPLINE.

23 SO I THINK THEY SHOULD JUST BE CONSISTENT ON WRITING ZERO
24 TO SIXTIES FOR ALL LOSS OF CONTAINMENT OR INCIDENTS WHERE
25 SOMEONE COULD BE HURT. AND THEN WHEN WRITING IN THE PD LOG, I

1 FEEL LIKE THEY SHOULD NOT PICK AND CHOOSE, THEY SHOULD JUST BE
2 CONSISTENT WITH WRITING WHAT THEY WRITE.

3 **Q.** MR. LAFAYETTE ASKED YOU ABOUT EXHIBIT 627, THE SHELL CODE
4 OF CONDUCT. CAN YOU TAKE A LOOK AT THAT? THAT IS ACTUALLY
5 627. AND LOOK AT PAGE --

6 **THE COURT:** 627 IS NOT ADMITTED.

7 **MS. SMALLETS:** I THOUGHT --

8 **THE COURT:** 626 WAS ADMITTED. SHE COULDN'T RECALL
9 627.

10 **MS. SMALLETS:** I THOUGHT THAT WAS REVERSED.

11 **THE COURT:** WAS IT REVERSED?

12 **MS. SMALLETS:** SHE COULD RECALL THE CODE OF CONDUCT
13 BUT NOT THE LETTER.

14 **THE COURT:** OKAY. FRANCES, WHAT DO YOU HAVE?

15 **THE CLERK:** I HAVE 627 WAS ADMITTED.

16 **THE COURT:** ALL RIGHT. MY MISTAKE.

17 **THE CLERK:** 626 WAS JUST I.D.'D.

18 **THE COURT:** ALL RIGHT. GO AHEAD.

19 **BY MS. SMALLETS:**

20 **Q.** TAKE A LOOK AT PAGE 240, WHICH IS THE -- WHICH IS LABELED
21 3.3 HARASSMENT.

22 **THE COURT:** YOU WANT TO PUT SOMETHING ON THE SCREEN
23 OR WHAT ARE WE DOING WITH THIS?

24 (DISPLAYED ON SCREEN.)

25 **THE WITNESS:** I DON'T HAVE A PAGE 240 IN THE CODE OF

1 CONDUCT.

2 **THE COURT:** IT'S THE LEGAL NUMBER, DEF 00240, ALSO
3 PAGE 12 OF THE HANDBOOK.

4 **BY MS. SMALLETS:**

5 **Q.** SO SEE HERE ON THE RIGHT IT TALKS ABOUT YOUR
6 RESPONSIBILITIES. DO YOU SEE THAT?

7 **A.** YES.

8 **Q.** AND IT TALKS ABOUT THINGS YOU CAN DO IF YOU ARE BEING
9 HARASSED.

10 MY QUESTION IS, WHO DID YOU REPORT HARASSMENT -- YOUR
11 CONCERNS ABOUT BEING TREATED DIFFERENTLY TO?

12 **A.** JEFF FISCHER, CAMERON CURRAN, ERIC PEREZ, CHRISTINE LAYNE,
13 GUY ROZAR, NICK BACKENS.

14 **Q.** JUST A QUICK QUALIFYING QUESTION ABOUT THAT.

15 WHY DID YOU TELL ERIC PEREZ?

16 **A.** WHY DID I TELL ERIC PEREZ? BECAUSE HE WAS THE HR THAT I
17 UNDERSTOOD ON OUR SITE. HE WAS THE MANAGER.

18 **Q.** HOW DID YOU COME TO THE UNDERSTANDING THAT HE WAS THE HR
19 PERSON FOR YOUR -- FOR YOUR SITE?

20 **A.** THEY TOLD US TO DEAL WITH ERIC PEREZ FOR ANY PERSONNEL
21 PROBLEMS IN OPCEN.

22 **Q.** MR. LAFAYETTE ASKED YOU YESTERDAY IF IT WOULD BE
23 REASONABLE FOR CHRISTINE TO TERMINATE YOU IF SHE BELIEVED
24 EVERYTHING THAT THEY WERE CLAIMING YOU DID WAS TRUE.

25 I WOULD LIKE TO ASK A FOLLOW-UP QUESTION ON THAT.

1 AFTER THE AUGUST 2ND MEETING THAT YOU HAD WITH MS. LAYNE,
2 DO YOU HAVE A BELIEF AS TO WHETHER OR NOT IT WOULD HAVE BEEN
3 REASONABLE FOR MS. LAYNE TO BELIEVE THAT ALL THE THINGS THAT
4 THEY WERE SAYING ABOUT YOU WAS TRUE?

5 **MR. LAFAYETTE:** OBJECTION, IMPROPER OPINION.

6 **THE COURT:** SUSTAINED.

7 **BY MS. SMALLETS:**

8 **Q.** WHAT DID YOU TELL MS. LAYNE DURING THAT AUGUST 2ND
9 MEETING?

10 **MR. LAFAYETTE:** CUMULATIVE.

11 **THE COURT:** OVERRULED.

12 **THE WITNESS:** I TOLD HER A FEW -- I STARTED TO TELL
13 SOME OF THE INCIDENTS STARTING WITH JEFF FISCHER MOSTLY, AND
14 HOW HE SAID I COULDN'T BE ON THAT TEAM, THAT WOMEN DON'T LAST
15 LONG IN OPCEN.

16 BEFORE THAT I HAD ALREADY MENTIONED THAT I WAS BEING
17 TREATED UNFAIRLY. THEY ASKED FOR SPECIFICS, AND WHEN I
18 STARTED TO LIST THE SPECIFICS I WAS STOP -- I STOPPED.

19 **MS. SMALLETS:** I HAVE NOTHING FURTHER.

20 **THE COURT:** ANYTHING ON THOSE QUESTIONS?

21 **MR. LAFAYETTE:** NOTHING MORE, YOUR HONOR.

22 **THE COURT:** ALL RIGHT.

23 **MR. LAFAYETTE:** RESERVE ON THIS WITNESS, THOUGH.

24 **THE COURT:** EXCUSE ME?

25 **MR. LAFAYETTE:** I RESERVE ON THIS WITNESS IN MY

1 CASE-IN-CHIEF.

2 **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN.

3 NEXT WITNESS.

4 MS. SMALLETS, NEXT WITNESS.

5 **MR. ETTINGHOFF:** I WILL BE CALLING NORA OSTROFE.

6 **THE COURT:** ALL RIGHT. CAN YOU GO AND GET THOSE
7 BINDERS OFF? I BELIEVE ONE OF THEM BELONGS TO MR. LAFAYETTE.
8 IT'S ALL RIGHT. I KNOW YOU HAVE YOUR KNEE. HAVE A SEAT.

9 **MR. LAFAYETTE:** I CAN GET IT, YOUR HONOR. THANK YOU.

10 (PAUSE IN THE PROCEEDINGS.)

11 **THE CLERK:** IF YOU WILL STAND AND SWORN, PLEASE.

12 **THE WITNESS:** ABSOLUTELY.

13 (NORA OSTROFE, CALLED AS A WITNESS FOR THE PLAINTIFF,
14 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

15 **THE WITNESS:** I DO.

16 **THE CLERK:** ALL RIGHT. PLEASE BE SEATED. THEN IF
17 YOU WILL ADJUST THE MICROPHONE AND PLEASE STATE YOUR FULL NAME
18 AND SPELL YOUR LAST NAME.

19 **THE WITNESS:** OKAY. MY NAME IS NORA OSTROFE. THAT
20 IS N-O-R-A, O-S- AS IN SAM- T-R-O-F- AS IN FRANK, E.

21 **THE COURT:** GOOD MORNING.

22 GOOD MORNING.

23 **THE WITNESS:** GOOD MORNING.

24 **THE COURT:** YOU MAY PROCEED, MR. ETTINGHOFF.

DIRECT EXAMINATION

BY MR. ETTINGHOFF:

Q. GOOD MORNING, MS. OSTROFE.

A. GOOD MORNING, MR. ETTINGHOFF.

Q. CAN YOU PLEASE STATE YOUR TITLE FOR THE JURY?

A. YES. I AM A FORENSIC ECONOMIST.

Q. WHAT DOES A FORENSIC ECONOMIST DO?

A. WHAT A FORENSIC ECONOMIST DOES IS THEY VALUE THE ECONOMIC DAMAGES IN LITIGATION. NOT ALL THE DAMAGES, BUT IN A LAWSUIT IF A PLAINTIFF CLAIMS THAT THEY LOST A CERTAIN AMOUNT OF MONEY, THE FORENSIC ECONOMIST WILL GO IN AND CALCULATE WHAT THEY LOST.

Q. AND CAN YOU DESCRIBE YOUR EDUCATIONAL BACKGROUND?

A. YES. I HAVE A BACHELOR'S DEGREE IN ECONOMICS FROM THE UNIVERSITY OF CALIFORNIA AT LOS ANGELES. I HAVE A TEACHING CREDENTIAL IN ENGLISH AND SOCIAL SCIENCE FROM THE UNIVERSITY OF CALIFORNIA AT BERKELEY. I HAVE A MASTER'S IN BUSINESS ADMINISTRATION FROM ST. MARY'S COLLEGE IN MORAGA, AND I HAVE CERTIFICATE IN ACCOUNTING AWARD WITH DISTINCTION FROM THE UNIVERSITY OF CALIFORNIA AT BERKELEY.

Q. AND HAVE YOU EVER TESTIFIED AS AN ECONOMIC EXPERT BEFORE IN COURT ON THE ISSUE OF LOST WAGES AND BENEFITS?

A. I HAVE.

Q. HOW MANY TIMES?

A. ABOUT 25 TIMES.

1 Q. DO YOU HAVE ANY OTHER QUALIFICATIONS IN FORENSIC ECONOMY?

2 A. YES. I AM A MEMBER OF THE NATIONAL ASSOCIATION OF
3 FORENSIC ECONOMICS. I AM A MEMBER OF THE COLLEGIUM OF
4 PECUNIARY DAMAGE EXPERTS. I AM PAST PRESIDENT OF THE AMERICAN
5 REHABILITATION ECONOMICS ASSOCIATION. I'M A CERTIFIED
6 EARNINGS ANALYST. AND I AM ALSO A CERTIFIED VALUATION
7 ANALYST.

8 MR. ETTINGHOFF: YOUR HONOR, I WOULD LIKE TO REQUEST
9 MS. OSTROFE BE DECLARED AS AN EXPERT.

10 THE COURT: ANY OBJECTION?

11 MS. LYONS: NO.

12 THE COURT: ADMITTED FOR THAT PURPOSE ON FORENSIC
13 ECONOMICS.

14 MR. ETTINGHOF: MS. OSTROFE WILL BE REVIEWING
15 SCHEDULES 1.3, 2.0 AND 3.1 OF HER SUPPLEMENTAL REPORT.

16 BY MR. ETTINGHOFF:

17 Q. MS. OSTROFE, DID YOU PERFORM A CALCULATION OF MS. NEWTON'S
18 LOST WAGES AND BENEFITS IN THIS CASE?

19 THE COURT: HOLD ON. I DON'T KNOW WHAT YOU ARE
20 TALKING ABOUT.

21 DO I HAVE EXHIBIT NUMBERS?

22 MS. LYONS: IS THERE AN EXHIBIT BINDER,
23 MR. ETTINGHOFF?

24 MR. ETTINGHOFF: YES, I AM SORRY.

25 MS. LYONS: YOUR HONOR, THE SUPPLEMENTAL REPORT WAS

1 TWO MONTHS LATE UNDER YOUR CASE SCHEDULING ORDER.

2 **THE COURT:** THERE WAS NO MOTION, SO WE'RE MOVING
3 FORWARD.

4 IS THERE SOME REASON THERE WAS NO MOTION?

5 **MS. LYONS:** THE MOTIONS HAD TO BE FILED BEFORE THE
6 SUPPLEMENTAL REPORT WAS SENT TO US.

7 **THE COURT:** WELL, WHERE ARE THE ORIGINAL ONES AND
8 WHAT IS THE DIFFERENCE?

9 **MR. ETTINGHOFF:** THIS IS JUST AN EXCERPT FROM THE
10 SUPPLEMENTAL REPORT THAT SHE PRODUCED. IT WAS ACTUALLY
11 TIMELY. THERE WAS ISSUE ABOUT THE PAGE NUMBERS THAT SHE
12 SUBSEQUENTLY FIXED.

13 **THE COURT:** WELL, LAY SOME FOUNDATION. LET'S SEE IF
14 THERE'S AN ISSUE OR NOT.

15 GO AHEAD. EXPLAIN WHAT'S GOING ON.

16 **BY MR. ETTINGHOFF:**

17 **Q.** MS. OSTROFE, WILL YOU LOOK AT EXHIBIT 201 IN YOUR BINDER,
18 PLEASE?

19 **A.** I'M RIGHT THERE.

20 **Q.** ARE YOU FAMILIAR WITH THIS DOCUMENT?

21 **A.** YES.

22 **THE CLERK:** YOU HAVE TO BE ON THE MIC. YOU HAVE TO
23 BE ON THE MIC.

24 **THE WITNESS:** ALL RIGHT. YES, I AM FAMILIAR WITH
25 EXHIBIT 201.

1 **BY MR. ETTINGHOFF:**

2 **Q.** AND THERE ARE THREE PAGES IN THIS DOCUMENT, CORRECT?

3 **A.** LET ME COUNT THEM.

4 THERE ARE THREE PAGES IN THIS DOCUMENT.

5 **Q.** OKAY. WHAT ARE THESE THREE PAGES?

6 **A.** THIS IS EXHIBIT 1.3 OF MY REPORT, WHICH IS MS. NEWTON'S
7 LOSSES TO WORK LIFE EXPECTANCY, ASSUMING THAT POST-TERMINATION
8 SHE COULD EARN THE AVERAGE EARNINGS OF A WHITE FEMALE IN THE
9 SAN FRANCISCO BAY AREA WITH A HIGH SCHOOL EDUCATION.

10 **MS. LYONS:** HONOR?

11 **THE COURT:** YES, MA'AM.

12 **MS. LYONS:** THIS WAS NOT AN ASSUMPTION IN THE AUGUST
13 REPORT. IN THE OCTOBER REPORT --

14 **THE COURT:** SO I'M LOOKING FOR YOUR REPORT, WHICH I
15 NOW --

16 **MR. ETTINGHOFF:** HER FULL REPORT IS EXHIBIT 200.

17 **THE COURT:** ALL RIGHT. LET ME GET 200.

18 WITH RESPECT TO THE TESTIMONY SHE JUST MADE, WHERE IN THE
19 REPORT EXHIBIT 200 IS IT?

20 **MR. ETTINGHOFF:** YOUR HONOR, THERE'S SCHEDULES IN THE
21 BACK OF HER REPORT STARTING WITH SCHEDULE 1.0 --

22 **THE COURT:** I'M TALKING ABOUT THE LAST -- HER
23 TESTIMONY -- I JUST NEED TO KNOW WHERE IN HER DISCLOSED REPORT
24 THE INFORMATION IS COMING FROM. IF IT IS IN THERE, IT COMES
25 IN. IF NOT, IT DOESN'T.

1 **MR. ETTINGHOFF:** YES. THEY ARE ALL IN THIS REPORT.

2 **THE COURT:** SO I AM ASKING YOU WHERE SPECIFICALLY. I
3 HAVE THE DOCUMENT. HER REPORT IS NUMBERED AS IS REQUIRED.
4 TELL ME WHICH NUMBERS.

5 **MR. ETTINGHOFF:** IN THE SECOND SECTION IN THE
6 SCHEDULES AND EXHIBITS, PAGE 6, PAGE 7, AND PAGE 9.

7 **THE COURT:** ALL RIGHT. GO AHEAD.

8 **BY MR. ETTINGHOFF:**

9 **Q.** DID YOU PERFORM A CALCULATION OF MS. NEWTON'S LOST WAGES
10 AND BENEFITS IN THIS CASE?

11 **A.** YES.

12 **Q.** IN CALCULATING MS. NEWTON'S LOST WAGES AND BENEFITS, DID
13 YOU CALCULATE HER PAST LOST EARNINGS AS WELL AS HER FUTURE
14 LOSS?

15 **A.** I DID.

16 **Q.** AND WE'VE HEARD TESTIMONY FROM THE PLAINTIFF THAT HER JOB
17 AT SHELL HAD GOOD PAY AND BENEFITS. DID YOU RELY ON HER WAGE
18 STATEMENTS AND BENEFIT INFORMATION IN CALCULATING THESE
19 DOCUMENTS?

20 **A.** I DID.

21 **Q.** WE'VE ALSO HEARD TESTIMONY FROM PLAINTIFF THAT, AFTER
22 BEING FIRED FOR SHELL, SHE WORKED AT VARIOUS PRODUCT
23 DEMONSTRATIONS JOBS AND ALSO AS A DENTAL ASSISTANT.

24 DID YOU RELY ON THIS INFORMATION IN CALCULATING
25 MS. NEWTON'S LOST WAGES AND BENEFITS?

1 **A.** I DID.

2 **Q.** WE'VE ALSO HEARD TESTIMONY FROM THE PLAINTIFF THAT SHE
3 TOOK A JOB AT ALASKA AIRLINES IN JUNE OF THIS YEAR.

4 DID YOU RELY ON HER WAGE STATEMENTS AND BENEFITS FROM THAT
5 JOB IN CALCULATING MS. NEWTON'S LOST WAGES AND BENEFITS?

6 **A.** YES.

7 **Q.** DID YOU CONSIDER ANY ALTERNATIVE SCENARIOS IN CALCULATING
8 HER LOST WAGES AND BENEFITS?

9 **A.** YES. I CALCULATED FOUR SCENARIOS OF LOSS.

10 **Q.** WHAT WERE THOSE SCENARIOS?

11 **A.** WELL, I MADE TWO ASSUMPTIONS ABOUT HOW LONG SHE WOULD
12 WORK. ONE WAS THAT SHE WOULD WORK TO HER WORK LIFE
13 EXPECTANCY, WHICH IS APPROXIMATELY THE AGE 56.3, AND THE OTHER
14 IS THAT SHE WOULD WORK TO HER FULL SOCIAL SECURITY RETIREMENT
15 AGE, WHICH IS AGE 67.

16 THEN I MADE TWO ASSUMPTIONS ABOUT WHAT SHE WILL EARN
17 POST-TERMINATION GOING FORWARD IN HER CAREER. IN ONE OF MY
18 ANALYSES, I KEPT HER AT WHAT SHE'S EARNING NOW AT ALASKA
19 AIRLINES AS A CUSTOMER SERVICE REPRESENTATIVE. IN THE OTHER,
20 WHAT I DID WAS I RELIED ON SOME INFORMATION COMPILED BY THE
21 CENSUS ABOUT WHAT PEOPLE EARN OVER THEIR LIFESPAN. AND IT'S
22 ORGANIZED BY GENDER AND RACE AND SO -- AND EDUCATION.

23 SO I TOOK THE EARNINGS OF A WHITE FEMALE WITH A HIGH
24 SCHOOL DEGREE AND WHAT THAT PERSON WOULD EARN, YOU KNOW,
25 BASICALLY FROM THEIR 30'S THROUGH RETIREMENT, AND THEN I

1 ADJUSTED IT FOR WAGES IN THE SAN FRANCISCO BAY AREA.

2 Q. OKAY.

3 AND THAT LAST SCENARIO YOU WERE JUST SPEAKING ABOUT, LET'S
4 FOCUS ON THAT ONE. HOW WOULD YOU DESCRIBE THAT SCENARIO IN
5 COMPARISON TO THE OTHERS?

6 A. THE LOSSES ARE LOWER IN THIS SCENARIO BECAUSE IT IS GOING
7 TO GROW HER WAGES OVER TIME AND IT ALSO ASSUMES THAT SHE WOULD
8 BE MAKING MORE THAN SHE IS MAKING CURRENTLY.

9 Q. AND SO IS THIS -- WOULD YOU SAY THIS IS THE MOST
10 CONSERVATIVE APPROACH OR SCENARIO?

11 A. THIS IS THE MOST CONSERVATIVE OF THE FOUR SCENARIOS THAT I
12 HAVE, YES.

13 MR. ETTINGHOFF: OKAY. YOUR HONOR, CAN WE MOVE
14 EXHIBIT 201 INTO EVIDENCE?

15 THE COURT: NOT YET. YOU CAN SHOW IT TO THE JURY.
16 YOU CAN SHOW IT TO THE JURY.

17 MR. ETTINGHOFF: SHOW IT TO THE JURY. OKAY.

18 THE COURT: I HAVE SOME QUESTIONS, BUT WE WILL DEAL
19 WITH THOSE LATER.

20 MR. ETTINGHOFF: OKAY.

21 (DISPLAYED ON SCREEN.)

22 BY MR. ETTINGHOFF:

23 Q. MS. OSTROFE, CAN YOU EXPLAIN WHAT SCHEDULE 1.3 IS?

24 A. YES. THIS IS THE SUMMARY OF MS. NEWTON'S WAGES -- WHAT
25 SHE WOULD HAVE MADE AT SHELL. THAT IS THE ROMAN NUMERAL I,

1 LOST EARNINGS AND FRINGE BENEFITS. AND IT IS DIVIDED INTO
2 PAST AND FUTURE PERIODS. SO IF YOU'RE GOING ALONG TO THE
3 RIGHT, YOU WILL SEE PAST LOSS. GO ALL THE WAY DOWN, DOWN,
4 DOWN -- THERE YOU GO. OKAY. PAST LOSS.

5 SO HAD SHE REMAINED AT SHELL AND CONTINUED TO WORK UP
6 UNTIL APPROXIMATELY THE PRESENT, I TOOK THIS TO NOVEMBER 4TH,
7 2018, WHICH IS A LITTLE EARLIER THAN TODAY'S DATE BECAUSE THAT
8 WAS THE ORIGINAL TRIAL DATE. SO HAD SHE REMAINED AT SHELL,
9 SHE WOULD HAVE EARNED \$220,673 IN WAGES AND FRINGE BENEFITS.

10 NOW, SHE HAD ONE BENEFIT THAT'S NOT COUNTED THERE. SHE
11 HAD A PENSION. OKAY? AND I'VE PUT THAT IN THE FUTURE LOSS
12 COLUMN BECAUSE GENERALLY PEOPLE COLLECT THEIR PENSIONS WHEN
13 SHE RETIRE, BUT SHE WOULD HAVE BEEN EARNING PENSION BENEFITS
14 AS SHE HAD WORKED.

15 Q. WERE THERE OTHER BENEFITS SHE WAS GETTING AT SHELL?

16 A. YES.

17 Q. DO YOU RECALL WHAT THOSE WERE?

18 A. YEAH. I'M GOING TO REFER TO MY NOTES BECAUSE THEY ARE --
19 IT IS COMPLEX. THERE IS QUITE A FEW.

20 SO SHE RECEIVED AN ANNUAL BONUS AND THE BONUS WOULD HAVE
21 BEEN UP TO 5 PERCENT OF SALARY. I GAVE HER HALF OF THAT. SO
22 I GAVE HER ABOUT TWO-AND-A-HALF PERCENT OF SALARY AND THAT
23 WOULD HAVE BEEN \$1,843 IN 2017 HAD SHE CONTINUED TO WORK AND
24 \$1,995 IN 2018. SHE RECEIVED EMPLOYER CONTRIBUTIONS TO HER
25 HEALTH INSURANCE AND THOSE WERE WORTH \$10,098 A YEAR.

1 SHE ALSO HAD SOMETHING CALLED A SAVINGS PLAN, WHICH WAS
2 SORT OF LIKE A 401K WHERE SHELL WOULD CONTRIBUTE MONEY TO HER
3 SAVINGS. THAT STARTED OUT AT TWO-AND-A-HALF PERCENT OF
4 SALARY. THEN AFTER SIX YEARS IT WOULD INCREASE TO 5 PERCENT
5 OF SALARY AND AFTER NINE YEARS IT WOULD INCREASE TO 10 PERCENT
6 OF SALARY.

7 SO IN THE YEARS WE ARE LOOKING AT, IT WOULD HAVE BEEN
8 \$1,882 A YEAR IN 2016, \$2,186 A YEAR IN 2017, AND \$2,366 IN
9 2018. I GAVE HER HER EMPLOYER'S CONTRIBUTIONS TO SOCIAL
10 SECURITY BENEFITS. THOSE WOULD HAVE BEEN 6.2 PERCENT OF
11 EARNINGS. AND THEN AS I DISCUSSED, SHE WAS ALSO ELIGIBLE FOR
12 A PENSION BENEFIT THAT WOULD BE BASED ON HER AGE, HER YEARS OF
13 SERVICE, AND HER SALARY AT TERMINATION.

14 **Q.** OKAY. AND THEN DID YOU ARRIVE AT A FIGURE FOR THE AMOUNT
15 OF WAGES AND BENEFITS THAT MS. NEWTON LOST FROM THE DATE OF
16 TERMINATION TO THE PRESENT?

17 **A.** THAT IS THE NUMBER WE JUST LOOKED AT, THE \$220,673.

18 **Q.** OKAY. DID YOU DEDUCT WHAT SHE MADE AT THE JOB SHE WORKED
19 AT AFTER SHE WAS TERMINATED FROM SHELL?

20 **A.** I DID. THAT'S THE \$28,269 IN BRACKETS.

21 **Q.** THAT IS HERE, CORRECT (INDICATING)?

22 **A.** CORRECT. AND SO HER NET WAGE AND BENEFITS LOSS WOULD BE
23 \$192,404 THROUGH APPROXIMATELY TODAY.

24 **Q.** AND DID YOU APPLY PREJUDGMENT INTEREST ON HER PAST LOSS?

25 **A.** I DID. I APPLIED -- 10 PERCENT IS THE LEGAL RATE IN

1 CALIFORNIA. SO I APPLIED PREJUDGMENT INTEREST TO HER LOST
2 EARNINGS AND TO THE EARNINGS THAT SHE MADE AND THE NET IS
3 \$21,015.

4 **Q.** LET'S MOVE TO FUTURE WAGES.

5 DID YOU THEN CALCULATE WHAT HER REASONABLY ANTICIPATED
6 LOST WAGES AND BENEFITS GOING FORWARD FROM TODAY?

7 **A.** I DID.

8 WE'RE GOING TO -- OKAY. WE'RE GOING TO GO FORWARD TO THAT
9 COLUMN THAT SAYS FUTURE LOSS. OKAY. THERE YOU GO. THERE'S
10 THE HIGHLIGHT. ALL RIGHT.

11 SO HAD SHE REMAINED AT SHELL UNTIL APPROXIMATELY AGE 52.6,
12 SHE WOULD HAVE MADE \$2,876,185. OKAY? AND HAD SHE RETIRED AT
13 THAT AGE, THE VALUE OF HER PENSION WOULD BE \$166,852. SO THAT
14 WOULD HAVE BEEN HER TOTAL EARNINGS AND BENEFITS AT SHELL.

15 WHAT SHE IS PROJECTED TO MAKE IS \$1,249,479. AND SO THE
16 IN NET LOSS TO HER IN THE FUTURE IS \$1,793,558.

17 **Q.** HOW DID YOU CALCULATE WHAT SHE MIGHT BE ABLE TO EARN FROM
18 HER PLACEMENT EMPLOYMENT?

19 **A.** I TOOK HER AT WHAT SHE IS EARNING NOW, AND I THINK SHE
20 TESTIFIED YESTERDAY THAT SHE'S MAKING ABOUT \$14.50 AN HOUR BUT
21 IT'S ACTUALLY \$14.65 SO I GAVE HER ANNUAL WAGES OF \$30,472.
22 AND THEN -- LET ME GET TO MY NOTES BECAUSE THIS IS A LITTLE
23 COMPLICATED. OKAY.

24 SO THEN BEGINNING IN 2019, I BEGAN INCREASING HER EARNINGS
25 UNTIL AT AGE 35 SHE WOULD BE EARNINGS \$47,211, WHICH WOULD BE

1 THE AVERAGE EARNINGS OF A WHITE FEMALE WITH A HIGH SCHOOL
2 DIPLOMA IN THE BAY AREA. OKAY?

3 THEN EVERY FIVE YEARS, HER WAGES ARE GOING TO CHANGE AGAIN
4 BASED UPON THE AVERAGE WAGES OF DEMOGRAPHICALLY SIMILAR
5 FEMALES AND SO FORTH THROUGH HER WORK LIFE EXPECTANCY. OKAY?

6 I HAVE ALSO GIVEN HER BENEFITS, HEALTH INSURANCE AND
7 EMPLOYER CONTRIBUTIONS, SOCIAL SECURITY AND THOSE ARE BASED ON
8 AVERAGE BENEFITS AND THE DATA IS COLLECTED BY THE BUREAU OF
9 LABOR STATISTICS.

10 Q. DID YOU DISCOUNT THAT TO LOSS PRESENT VALUE?

11 A. I DISCOUNTED -- ALL THE NUMBERS IN MY REPORT ARE
12 DISCOUNTED TO PRESENT VALUE, THAT'S CORRECT.

13 Q. CAN YOU EXPLAIN WHAT THAT MEANS?

14 A. YES. WHAT WE DO IS, BECAUSE WHEN A PLAINTIFF IS -- IF
15 THEY ARE GIVEN AN AWARD FOR LOSSES IN THE FUTURE, THEY HAVE
16 THE ABILITY TO INVEST THAT MONEY AND EARN A RETURN ON IT. SO
17 WE DON'T WANT TO OVERCOMPENSATE THEM, SO WE REDUCE IT A LITTLE
18 BIT TO ACCOUNT FOR THE INVESTMENT RETURNS THAT THEY MIGHT
19 RECEIVE.

20 Q. AND YOU PERFORMED THAT CALCULATION HERE, CORRECT?

21 A. YES. ALL THESE NUMBERS HAVE BEEN REDUCED TO PRESENT
22 VALUE.

23 Q. CAN WE LOOK AT SCHEDULE 3.1?

24 A. SURE. I THINK --

25 (DISPLAYED ON SCREEN.)

1 **A.** I THINK YOU NEED TO PUT IT UP THERE. IT'S A LITTLE
2 SQUINCHY.

3 **Q.** THE NUMBERS ARE A LITTLE SMALL. SEE IF WE CAN ZOOM IN
4 HERE.

5 **A.** OKAY. HERE IS WHAT I WAS TELLING --

6 **Q.** CAN YOU DESCRIBE FIRST WHAT THIS TABLE IS?

7 **A.** YEAH. IS THERE ANY WAY TO SHARPEN THE FOCUS? I DON'T
8 KNOW ABOUT YOU BUT THE NUMBERS -- OKAY.

9 BASICALLY, WHAT WE ARE DOING, WHERE IT SAYS ANNUAL WAGE,
10 YOU WILL FIND THAT THOSE NUMBERS -- THERE YOU GO. THAT'S
11 MUCH, MUCH BETTER. HERE WE ARE.

12 IF YOU LOOK AT 2018, GOING OVER THERE TO THE FAR LEFT-HAND
13 COLUMN, YOU HAVE SOME DATES, AND THERE'S \$30,472 FOR WAGES.
14 THAT'S HER -- THE \$14.65 SHE EARNS AT ALASKA AIRLINES,
15 MULTIPLY 2,080 HOURS PER YEAR. YOU WILL NOTICE IN 2019, THAT
16 BEGINS TO GROW. SO WE HAVE \$36,052, THEN IT GOES TO \$41,000,
17 UNTIL IT GOES UP TO \$47,211 AND THEN IT IS STABILIZED. THEN
18 WE GO -- GET INCREASES TO \$49,616, THEN IT INCREASES TO
19 \$50,000.

20 SO, BASICALLY, YOU HAVE THESE INCREASES EVERY FIVE YEARS.
21 AND THAT'S BECAUSE WHEN THE CENSUS COMPILES THIS INFORMATION
22 ON AVERAGE, AVERAGE EARNINGS OF PEOPLE WITH
23 VARIOUS DEMOGRAPHICS CHARACTERISTICS --

24 **THE COURT:** STAY CLOSE TO THE MIC.

25 **THE WITNESS:** OKAY. THAT'S BECAUSE, WHEN THE CENSUS

1 BUREAU COMPILES THE INFORMATION ABOUT THE AVERAGE EARNINGS OF
2 PEOPLE WITH VARIOUS DEMOGRAPHIC CHARACTERISTICS, THEY DO IT IN
3 FIVE-YEAR INCREMENTS. SO I HAVE GIVEN HER THOSE INCREASES
4 THROUGHOUT HER WORK LIFE EXPECTANCY.

5 **BY MR. ETTINGHOFF:**

6 **Q.** OKAY. SO ASSUMING THE WORK LIFE -- HER WORK LIFE
7 EXPECTANCY, WHAT AGE WOULD SHE BE AT THAT TIME?

8 **A.** IT IS 56.3. LET ME CHECK THAT FOR SURE. AND THAT GOES
9 OUT --

10 **THE COURT:** WHILE SHE IS LOOKING, MR. ETTINGHOFF, THE
11 TOP LEFT CONTROLS COLOR. IF YOU TAP ON THE CORNER OF YOUR
12 SCREEN, IT WILL RUN THROUGH DIFFERENT COLORS. RIGHT NOW YOU
13 HAVE IT ON WHITE FOR SOME REASON.

14 **MR. ETTINGHOFF:** ALL RIGHT. THANK YOU.

15 **THE WITNESS:** THAT IS AGE 56.3. BUT I WANT TO BE
16 CAREFUL ABOUT IT. THAT IS A LITTLE BIT OF A SHORTHAND
17 ECONOMISTS USE. THAT DOESN'T MEAN THAT AT AGE 56.3, THEY ARE
18 GOING TO HAVE THE BIG PARTY AND SHE RETIRES. IT IS BASED ON
19 THE FACT THAT WOMEN, YOU KNOW, AT AGE 30 WITH A HIGH SCHOOL
20 DIPLOMA, BECAUSE WORK LIFE EXPECTANCY IS BASED ON EDUCATION,
21 ARE EXPECTED TO HAVE ABOUT 23 MORE ACTIVE YEARS IN THE LABOR
22 FORCE.

23 SO WHAT WE DO IS WE JUST ADD THAT TO THEIR AGE AND SAY
24 OKAY, THEY ARE RETIRING AT 56.3. BUT SHE MAY RETIRE LATER
25 THAN THAT, BUT THESE ARE THE YEARS SHE WOULD BE EXPECTED TO BE

1 ACTIVE AND EARNING.

2 **MR. ETTINGHOFF:** AND I WANT TO PULL UP SCHEDULE 1.3
3 AGAIN. IF YOU DON'T MIND, I CAN HELP MY --

4 **THE COURT:** WHY DON'T WE -- ACTUALLY THIS IS A GOOD
5 BREAKING POINT. WHY DON'T WE GO AHEAD AND TAKE OUR MORNING
6 BREAK.

7 SO THERE SHOULD BE SOMETHING IN THERE FOR YOU. IT'S A
8 LITTLE BIT MORE ON THE SWEET SIDE. HOPEFULLY IT'S THERE. I
9 HOPE YOU ENJOY IT. WE WILL SEE YOU IN ABOUT 15 MINUTES.

10 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

11 **THE COURT:** THE RECORD WILL REFLECT THE JURY HAS LEFT
12 THE ROOM.

13 TWO THINGS. ONE, IT IS IN MY ORDER AND I MENTIONED IT
14 MANY TIMES. WITNESSES ARE NEVER SHOWN OR PARTIES CANNOT USE
15 ANY EXHIBIT THAT'S NOT ON THE LIST.

16 THAT EXHIBIT WAS NOT ON THE LIST. IT WAS NOT RAISED THIS
17 MORNING. OBVIOUSLY, YOU MUST HAVE HAD THE TEXT MESSAGES.
18 THEY COULD HAVE BEEN IDENTIFIED. THERE WAS NO GRAND
19 IMPEACHMENT THAT I SAW. IT WAS NOT APPROPRIATE. SO, THAT'S
20 WHY YOU WERE DENIED.

21 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR. I APOLOGIZE
22 TO THE COURT. IT WAS MY INTENT TO TRY AND SHOW IT TO HER, SEE
23 IF IT WOULD REFRESH HER RECOLLECTION. THAT WAS IT. I WASN'T
24 LOOKING AT IT AS IMPEACHMENT.

25 **THE COURT:** YOU SAID IMPEACHMENT. IN ANY EVENT.

1 NOW, EVERY MORNING WE TALK. EVERY MORNING. THIS MORNING
2 WE HAD LOTS OF EXTRA TIME. WHY THE HECK SOME OBJECTION ABOUT
3 THE EXPERT REPORT WASN'T RAISED IS BEYOND ME.

4 SO, THAT'S WHY I'M ALLOWING THIS TO GO ON. I DON'T KNOW
5 WHAT, IF ANYTHING, IS THE ISSUE, BUT IT SHOULD HAVE BEEN
6 RAISED THIS MORNING. SO WHAT IS THE ISSUE?

7 **MS. LYONS:** THE ISSUE, YOUR HONOR, IS THAT
8 MR. ETTINGHOFF IS USING AN EXHIBIT THAT WAS FIRST PRODUCED TO
9 US --

10 **THE COURT:** WHY DIDN'T YOU RAISE IT THIS MORNING OR
11 YESTERDAY?

12 **MS. LYONS:** BECAUSE WE HAD NO ADVANCED NOTICE OF
13 WHAT --

14 **THE COURT:** IT IS IN THE EXHIBIT BINDER.

15 **MS. LYONS:** WE WERE NOT AWARE OF WHAT MR. ETTINGHOFF
16 WOULD PROPOSE TO DO. MS. OSTROFE STARTED WITH TWO SCENARIOS
17 AND SHE INCREASED THEM TO FOUR IN HER OCTOBER REPORT,
18 PRECLUDING EXAMINATION BY OUR OFFICE ON THEM.

19 **THE COURT:** OKAY. SO YOU KNEW ABOUT THIS IN OCTOBER
20 AND TODAY IT IS DECEMBER 13TH, AND I'M HEARING IT IN TRIAL?

21 **MS. LYONS:** I WOULD HAVE EXPECTED THEM TO HAVE
22 RESTRICTED THEIR EXPERT EXAMINATION TO WHAT THEY REPORTED
23 UNDER THE COURT-ORDERED TIMELINE.

24 **THE COURT:** YEAH. AND YOU KNOW HOW MUCH LITIGATION
25 HAS HAPPENED IN THIS COURTROOM ABOUT ALL SORTS OF THINGS THAT

1 ARE EXPECTED OR NOT EXPECTED?

2 WE DON'T DO THIS IN THE MIDDLE OF TESTIMONY. YOU GUYS
3 RAISE MOTIONS AND FILE MOTIONS AND YOU FILE THEM AND CHANGE
4 THINGS ALL THE TIME. I HAVE HAD TO REPEATEDLY EXPLAIN TO ALL
5 OF YOU THAT THAT WAS INAPPROPRIATE.

6 IF YOU HAD A CONCERN BECAUSE SOMETHING WAS RAISED IN
7 OCTOBER, YOU ARE BEYOND THE DEADLINE, THIS SHOULD HAVE BEEN
8 RAISED. I WOULD HAVE GIVEN YOU THE OPPORTUNITY TO DEPOSE HER.

9 AN OBJECTION AFTER EVERY MORNING I ASK ARE THERE ISSUES,
10 IT IS NEVER RAISED WHEN IT'S IN THE BINDERS? WHEN IT IS
11 PRODUCED? IS NOT -- IT IS BEYOND ME WHY THIS HAS HAPPENED.

12 I WANT TO UNDERSTAND WHAT THE DIFFERENCES AND WHY WAS IT
13 THAT THESE THINGS WERE PRODUCED AFTER HER DEPOSITION? HOW IS
14 THAT FAIR?

15 **MR. ETTINGHOFF:** SHE -- SO MS. OSTROFE PRODUCED THE
16 SUPPLEMENTAL REPORT THAT WENT -- THAT BASICALLY RESPONDED TO
17 SOME OF THE QUESTIONS THAT WERE MADE IN -- THAT WERE ASKED IN
18 HER DEPOSITION.

19 THEN THERE WAS ALSO AN ISSUE ABOUT THE PAGE NUMBERS AND
20 THE TABLE OF CONTENTS THAT SHE HAD NOT INCLUDED. SHE INCLUDED
21 IT IN SEVERAL REVISED VERSIONS THAT WE SENT TO COUNSEL MONTHS
22 AGO.

23 **THE COURT:** AND WHY IS IT THAT YOU THINK THAT YOU
24 COULD HAVE A SUPPLEMENTAL REPORT AFTER MY CUT-OFF AND AFTER
25 THE DEPOSITION? DID YOU OFFER TO HAVE HER DEPOSED ON THOSE

1 ADDITIONAL TOPICS?

2 **MS. SMALLETS:** YES, YOUR HONOR.

3 **MS. LYONS:** NO, YOUR HONOR.

4 **MS. SMALLETS:** FEDERAL RULES ALLOW FOR SUPPLEMENTAL
5 REPORTS. MS. OSTROFE IS -- SO TWO ISSUES. MS -- AT THE TIME
6 OF THE INITIAL EXPERT REPORT, MS. NEWTON HAD JUST GOTTEN THE
7 JOB AT ALASKA AIRLINES. BY THE TIME THE SUPPLEMENTAL DEADLINE
8 CAME AROUND, THERE WAS MORE INFORMATION THAT ALLOWED FOR
9 BETTER CALCULATIONS.

10 SECOND OF ALL, AT HER DEPOSITION, COUNSEL RAISED THE
11 OBJECTION THAT THESE SCENARIOS WERE NOT SUFFICIENTLY
12 CONSERVATIVE. SO IN RESPONSE TO THAT DEPOSITION -- THOSE
13 CONCERNS, MS. OSTROFE CALCULATED TWO MORE CONSERVATIVE
14 SCENARIOS. WE SERVED THEM ON THE DEADLINE FOR SUPPLEMENTAL
15 REPORTS IN THE FEDERAL RULES OF CIVIL PROCEDURE.

16 COUNSEL OBJECTED AT THAT TIME. WE SAID WE HAD NO
17 OBJECTION TO BRINGING HER BACK. WE DIDN'T THINK WE HAD TO PAY
18 FOR IT. BUT WE HAD NO OBJECTION TO THEM DEPOSING HER AGAIN ON
19 THESE NEW SCENARIOS THAT ADDRESSED CONCERNS THAT THEY HAD
20 RAISED. THEY DROPPED IT. THEY DIDN'T ASK TO HAVE HER BACK
21 AND HAVEN'T RAISED SINCE THE OCTOBER TIME FRAME.

22 **MR. LAFAYETTE:** IF I COULD, YOUR HONOR.

23 THIS DOCUMENT WASN'T ON THE ORIGINAL SUBMISSION TO THE
24 COURT ON OCTOBER 5 THAT WE DID. IT WASN'T ON THE -- I THINK
25 IT'S DOCKET NO. 182. I SEE IT ON DOCKET NO. 215 ON 12/5.

1 WHEN I SEE IT ON THAT DOCKET NUMBER, I SEE THE DEFENDANTS MADE
2 AN OBJECTION AND ONE OF THE OBJECTIONS WAS UNTIMELY.

3 **MS. SMALLETS:** YOUR HONOR --

4 **MR. LAFAYETTE:** THERE WAS AN OBJECTION MADE TO THIS
5 DOCUMENT WHEN THIS DOCUMENT WAS SUBMITTED TO THE COURT.

6 **THE COURT:** MR. LAFAYETTE, YOU KNOW -- MAYBE
7 MS. LYONS DOESN'T, I DON'T KNOW HOW OFTEN SHE TRIES CASES.
8 YOU KNOW THIS SHOULD HAVE BEEN RAISED THIS MORNING.

9 **MR. LAFAYETTE:** AND I APOLOGIZE TO THE COURT THAT IT
10 WASN'T RAISED THIS MORNING. IT WASN'T AN INTENT TO DO
11 ANYTHING TO UNDERMINE THE PROCESS THAT WE ARE GOING THROUGH.

12 **THE COURT:** SO NOW WE HAVE THINGS THAT ARE MORE
13 CONSERVATIVE?

14 **MS. SMALLETS:** YES, YOUR HONOR. THE ORIGINAL
15 SCENARIOS IN THE ORIGINAL PART WERE FOUR MILLION AND THREE
16 MILLION. THESE ARE LESS. THE NUMBERS ARE LOWER. WE --

17 **THE COURT:** SO HOW IS THERE ANY PREJUDICE?

18 **MS. LYONS:** NO PREJUDICE. SIMPLY A LACK OF
19 OPPORTUNITY TO EXAMINE HER ON THE REMAINING ASSUMPTIONS.

20 **THE COURT:** NOW YOU GET A FOUR-MINUTE BREAK. THAT'S
21 IT. ACTUALLY FOUR PLUS FIVE. NINE MINUTES.

22 (RECESS TAKEN AT 10:11 A.M.; RESUMED AT 10:19 A.M.)

23 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

24 **THE CLERK:** REMAIN SEATED.

25 **MR. LAFAYETTE:** BEFORE THE JURY COMES BACK, YOUR

1 HONOR?

2 I'M GOING TO DO THE CROSS-EXAMINATION OF HER.

3 **THE COURT:** ALL RIGHT. ALL RIGHT. LET'S CALL THE
4 JURY BACK IN.

5 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

6 **THE COURT:** GOOD MORNING. WE ARE BACK ON THE RECORD.
7 THE RECORD WILL REFLECT THE JURY IS BACK. SO HOW WAS IT?

8 **JUROR:** IT IS ALL GONE NOW.

9 **JUROR:** IT WAS GOOD.

10 **THE COURT:** I ONLY GAVE YOU EIGHT PIECES SO NO ONE
11 WAS FIGHTING OVER ANY LEFTOVERS. MY CLERKS HAD TO FIGHT OVER
12 THE LAST TWO PIECES. BUT I DO RECALL -- AND THIS IS ON MY
13 TIME, MR. ETTINGHOFF, NOT YOURS. DON'T WORRY.

14 **MR. ETTINGHOFF:** THAT'S OKAY.

15 **THE COURT:** WHEN I WAS PREGNANT, I THINK IT WAS MY
16 FIRST SON, I HAD BEEN VERY GOOD AND I DIDN'T DO ANY COFFEE,
17 RIGHT? NO COFFEE WHATSOEVER. I CHANGED WITH THE OTHER TWO.
18 BUT FIRST ONE, NO COFFEE.

19 THEN I HAD LIKE WHAT I GAVE YOU GUYS. IT WAS DESSERT THAT
20 HAD KIND OF THE COFFEE FLAVOR. I THINK I HAD FOUR PIECES.
21 THIS IS SO GOOD, THAT COFFEE TASTE. I AM VERY ADDICTED NOW.
22 I'M GLAD YOU ENJOYED IT. SOMETHING EVEN DIFFERENT FOR THE
23 NEXT BREAK. WE WILL SEE IF YOU LIKE THAT ONE.

24 OKAY. I HAVE THE JURY NOW FED, CAFFEINED AND READY TO
25 KEEP GOING.

1 YOU MAY PROCEED.

2 **MR. ETTINGHOFF:** I AM NOT QUITE AS EXCITING AS THOSE
3 SWEETS, BUT LET'S KEEP GOING. CAN WE PULL UP SCHEDULE 3.1
4 AGAIN?

5 **THE WITNESS:** MY SCREEN IS DARK.

6 **THE COURT:** AND AT THIS POINT I WILL ADMIT
7 EXHIBIT 201. GO AHEAD.

8 (PLAINTIFF'S EXHIBIT 201 RECEIVED IN EVIDENCE)

9 (DISPLAYED ON SCREEN.)

10 **THE WITNESS:** OKAY. THIS IS 1.3.

11 (DISPLAYED ON SCREEN.)

12 **BY MR. ETTINGHOFF:**

13 **Q.** OKAY. ALL RIGHT.

14 **A.** AND THEN IF WE CAN MAKE IT JUST A LITTLE BIT SHARPER. YOU
15 ARE GOING TO PULL PART OF IT UP. THERE YOU GO.

16 **Q.** JUST TO REMIND THE JURY WHAT WE ARE DOING HERE. THIS IS
17 WHAT SHE IS GOING TO MAKE IN THE FUTURE, CORRECT, AT ALASKA
18 AIRLINES?

19 **A.** NO. THE ALASKA AIRLINES EARNINGS ARE THE 30,472.

20 **Q.** OKAY.

21 **A.** WE ARE ASSUMING THAT HER EARNINGS ARE GOING TO GROW BEYOND
22 THAT BASED ON AVERAGE EARNINGS FOR WOMEN, WHITE WOMAN WITH A
23 HIGH SCHOOL EDUCATION IN THE SAN FRANCISCO BAY AREA. SO I
24 PULLED HER UP TO 47,211.

25 **Q.** OKAY.

1 **A.** OKAY.

2 **Q.** SO WHERE ON THIS -- ON THIS CHART ON 3.1, YOU WERE SHOWING
3 US EVERY FIVE YEARS HER WAGES INCREASE, CORRECT?

4 **A.** RIGHT. THAT IS THE BOLD. SEE WHERE IT SAYS AGE 35 AND
5 THERE IS A BOLD NUMBER. AND AGE 40, AND THERE IS A BOLD
6 NUMBER. AND AGE 45.

7 **Q.** OKAY. WHERE IS THE END OF WORK LIFE EXPECTANCY?

8 **A.** RIGHT AFTER AGE 55.

9 **Q.** OKAY.

10 **A.** THEN IT GOES ALL THE WAY OUT TO 67.

11 **Q.** OKAY.

12 AND IF YOU WERE TO CALCULATE THE LOSSES TO APPROXIMATELY
13 TEN YEARS AFTER THE DATE OF TRIAL, HOW WOULD YOU MAKE THAT
14 CALCULATION?

15 **A.** OKAY. IF I WAS TO DO THAT, WHAT I WOULD DO IS I WOULD
16 COUNT UP TO THIS DATE. I WOULD GO OUT TO APPROXIMATELY
17 12/11/2028. RIGHT UP THERE. OKAY.

18 SEE IF THAT'S THE RIGHT NUMBER. IS THAT 539,384. THAT
19 IS. OKAY. SO THIS IS APPROXIMATELY TEN YEARS FROM THE DATE
20 OF TRIAL. AND SHE WOULD MAKE THE \$539,384, IS PROJECTED TO
21 MAKE THAT MUCH.

22 **Q.** OKAY.

23 **A.** IN ALTERNATE EMPLOYMENT.

24 **Q.** IN ALTERNATE EMPLOYMENT SHE WOULD BE MAKING 539,384?

25 **A.** RIGHT.

A. IT IS NOT.

1 Q. HOW WOULD WE CALCULATE THAT NUMBER --

2 A. OKAY.

3 Q. -- BASICALLY?

4 A. YOU WOULD TAKE THE \$1,313,344, YOU WOULD ADD THE \$56,913,
5 WHICH IS THE NUMBER THAT I GAVE YOU FOR HER PENSION, AND SO
6 HER TOTAL LOST WAGES AND BENEFITS AND PENSION WOULD BE
7 \$1,370,257.

8 Q. THAT'S THE TOTAL THAT LOSS HAD SHE REMAINED AT SHELL --

9 A. REMAINED AT SHELL FOR TEN YEARS. THAT'S NOT INCLUDING
10 WHAT SHE LOST TO DATE.

11 Q. OKAY.

12 A. WHICH WE ALREADY LOOKED AT. THAT IS THE NEXT TEN YEARS
13 INTO THE FUTURE.

14 Q. OKAY. AND THAT'S THAT NUMBER WE TOOK FROM SCHEDULE 2.0?

15 A. CORRECT.

16 Q. SO THE TOTAL LOSS, HAD SHE REMAINED AT SHELL, YOU TAKE THE
17 NUMBER FROM THE RIGHT-HAND COLUMN?

18 A. THE 1,313,344. THERE YOU GO. WHICH IS ABOUT TEN YEARS
19 OUT. THEN YOU ADD THE SHELL PENSION, WHICH IS 56,913.

20 Q. OKAY.

21 A. SO HER TOTAL LOSS FUTURE WAGES ARE 1,370,257.

22 FOR THE COURT REPORTER, IT IS 1,370,257.

23 Q. NOW, DO WE HAVE TO SUBTRACT A NUMBER FROM THAT?

24 A. YES. THAT'S WHAT SHE WOULD HAVE MADE AND THEN WE SUBTRACT
25 WHAT SHE IS PROJECTED TO MAKE. OKAY? WHICH IS WHAT WE LOOKED

1 AT BEFORE ON SCHEDULE 3.1 WHICH IS THE 539,384. 539,384.

2 SO HER NET TOTAL LOSS, THE DIFFERENCE BETWEEN WHAT SHE
3 WOULD HAVE MADE AT SHELL HAD SHE WORKED FOR THE NEXT TEN YEARS
4 AND WHAT SHE'S PROJECTED TO MAKE IF SHE WORKS IN ALTERNATE
5 EMPLOYMENT FOR THE NEXT TEN YEARS, IS \$830,873. 830,873.
6 THEN WE ADD THE NUMBER THAT WE LOOKED AT PREVIOUSLY, WHICH IS
7 WHAT SHE HAS LOST TO DATE, WHICH IS THE \$213,419.

8 **Q.** OKAY. AND THAT IS ON SCHEDULE 1.3, CORRECT?

9 **A.** IT IS.

10 SO HER TOTAL LOSS IS \$1,044,292. 1,044,292.

11 NOW, THAT NUMBER IS NOT STRICTLY CORRECT BECAUSE I HAVE
12 DIFFERENT ENDING DATES ON SCHEDULE 1.3, BECAUSE I WAS DOING
13 DIFFERENT CALCULATIONS THEN ON SCHEDULE 2.0. IF WE TOOK IT
14 OUT AND DID EXACTLY TEN YEARS, THROUGH NOVEMBER 4TH, 2028, THE
15 LOSS WOULD BE \$1,019,290. SO THAT IS 1,019,290.

16 **MR. ETTINGHOF:** NO FURTHER QUESTIONS.

17 **THE COURT:** MR. LAFAYETTE.

18 **MR. LAFAYETTE:** YES, YOUR HONOR.

19 **CROSS-EXAMINATION**

20 **BY MR. LAFAYETTE:**

21 **Q.** GOOD MORNING.

22 **A.** GOOD MORNING, MR. LAFAYETTE.

23 **Q.** HOW ARE YOU?

24 **A.** I SHOULD POINT OUT, I HAVE NOT HAD MY COFFEE.

25 **Q.** I HOPE THAT WON'T HURT US HERE TODAY?

1 **A.** IT WILL HURT ME. IT IS HURTING ME NOW.

2 **Q.** LET ME ASK YOU A FEW QUESTIONS ABOUT WHAT YOU DO. OKAY?

3 **A.** OKAY.

4 **Q.** NOW, YOU GET PAID FOR WHAT YOU DO, RIGHT?

5 **A.** I DO.

6 **Q.** HOW MUCH MONEY DO YOU GET PAID AN HOUR FOR WHAT YOU DO?

7 **A.** WELL, THERE'S TWO QUESTIONS -- QUESTION AS YOU KNOW
8 COMMONLY COMES UP. WHAT DO I BILL IS DIFFERENT FROM WHAT I AM
9 PAID.

10 SINCE I'M UNDER OATH, I HAVE TO MAKE THAT DISTINCTION
11 BECAUSE I'M NOT PAID ANYWHERE CLOSE TO WHAT I BILL BECAUSE
12 THAT GOES BACK TO MY FIRM AND THEY PAY EXPENSES. ALL THAT
13 KIND OF THING.

14 **Q.** WHAT DO YOU BILL AN HOUR?

15 **A.** FOR TESTIMONY, WHAT I BILL IS \$395 AN HOUR, 395 FOR THE
16 COURT REPORTER. AND WHAT I BILL WHEN I'M PUTTING MY ANALYSES
17 TOGETHER IS \$245 AN HOUR. 245.

18 **Q.** HOW MUCH ARE YOU BEING PAID TO BE HERE TODAY?

19 **A.** RIGHT NOW I'M BEING PAID \$395 AN HOUR.

20 **Q.** OKAY.

21 **A.** IF I AM PAID. SOMETIMES I AM NOT.

22 **Q.** UNDERSTAND THAT TOO.

23 DID YOU SUBMIT AN INVOICE FOR PREPARING THE REPORT THAT
24 YOU PREPARED?

25 **A.** I DID.

1 Q. HOW MUCH MONEY HAVE YOU INVOICED FOR THE REPORT SO FAR?

2 A. THAT IS A GOOD QUESTION. I DON'T KNOW PRECISELY, BUT I
3 WOULD SAY PROBABLY FOR A FEDERAL REPORT, THE COST IS USUALLY
4 CLOSE TO ABOUT \$5,000 BECAUSE IT IS A LOT OF WORK.

5 Q. ALL RIGHT. AND THEN YOU HAD TO APPEAR FOR A DEPOSITION,
6 RIGHT?

7 A. CORRECT.

8 Q. DID YOU GET PAID -- DID YOU CHARGE AN HOURLY RATE FOR THE
9 DEPOSITION?

10 A. RIGHT. THAT WOULD BE MY TESTIMONY RATE. SO THAT WAS AT
11 THE \$395 RATE.

12 Q. AND SO THIS IS WHAT YOUR LIFE'S WORK IS NOW, RIGHT?
13 TESTIFYING?

14 A. WELL, MY LIFE'S WORK INCLUDES A LOT MORE.

15 Q. I PROBABLY OVERSTATED IT.

16 A. DON'T ASK THAT QUESTION WHEN I HAVEN'T HAD MY COFFEE.
17 THIS IS PARTIALLY WHAT I DO. I AM ALSO A MOTHER. THAT IS A
18 LOT OF WORK, TOO.

19 Q. BUT THIS IS YOUR OCCUPATION?

20 A. THIS IS MY OCCUPATION IS A GOOD WORD FOR IT.

21 Q. APPROXIMATELY, HOW MANY CASES A YEAR DO YOU TESTIFY IN?

22 A. NOT A LOT BECAUSE I DO A LOT OF SUPPORT WORK IN THE
23 OFFICE. SO I WOULD SAY COMING TO TRIAL IS MAYBE FOUR OR FIVE
24 TIMES A YEAR. IT'S NOT THAT -- AND A LOT OF THE CASES SETTLE
25 BEFORE TRIAL. SO COMING TO TRIAL IS AN INFREQUENT OCCURRENCE

1 FOR ME.

2 Q. HOW MANY REPORTS DO YOU PREPARE A YEAR?

3 A. I WOULD SAY UPWARDS OF 50 AT LEAST.

4 Q. SO THEN LET'S TALK A LITTLE BIT ABOUT HOW YOU GO ABOUT
5 PREPARING THE REPORTS. OKAY?

6 A. OKAY.

7 Q. SO WHEN YOU DO THESE REPORTS, IS THE SUMMARY REPORT
8 SCHEDULE TWO -- WHICH PAGE IS IT ON?

9 A. THE SUMMARY REPORT --

10 Q. PAGE 6?

11 A. I CAN'T ANSWER THAT QUESTION BECAUSE I DON'T HAVE THE -- I
12 DON'T HAVE THE EXHIBIT. I JUST HAVE A PORTION OF IT. JUST
13 THE THREE PAGES WE WENT OVER.

14 Q. I AM LOOKING AT SCHEDULE 1.3. DO YOU HAVE IT THERE?

15 A. OKAY. IN EXHIBIT 201?

16 Q. YES.

17 A. YES. YES.

18 Q. IS THAT YOUR SUMMARY?

19 A. THAT IS ONE -- I HAD FOUR SCENARIOS. THIS IS ONE OF FOUR
20 SUMMARIES.

21 Q. SO LET'S TALK ABOUT THIS ONE FOR A SECOND.

22 NOW, IF I AM LOOKING AT THIS, RIGHT HERE I (INDICATING)
23 WHERE IT SAYS --

24 THE COURT: ARE YOU GOING TO PUT IT UP FOR THE JURY
25 OR NOT?

1 **MR. LAFAYETTE:** YES, YOUR HONOR.

2 (DISPLAYED ON SCREEN.)

3 **THE COURT:** THANK YOU.

4 **BY MR. LAFAYETTE:**

5 **Q.** SO IT SAYS THIS COLUMN OVER HERE FUTURE LOSS. DO YOU SEE
6 THAT?

7 **A.** CORRECT.

8 **Q.** ALL RIGHT. I WANT TO TALK ABOUT HOW YOU GO ABOUT
9 CALCULATING THAT.

10 **A.** OKAY.

11 **Q.** THIS TOP NUMBER UP HERE, THE THREE MILLION FORTY-THREE
12 NUMBER.

13 **A.** RIGHT.

14 **Q.** THAT'S WHAT YOU ARE SAYING SHE WOULD HAVE MADE HAD SHE
15 REMAINED AT SHELL?

16 **A.** CORRECT.

17 **Q.** I WANT TO TALK ABOUT THE ASSUMPTIONS THERE.

18 **A.** OKAY.

19 **Q.** FIRST OF ALL, YOU ARE ASSUMING SHE IS GOING TO STAY AT
20 SHELL FOR THE REST OF HER WORK LIFE. WOULD THAT BE TRUE?

21 **A.** THAT'S CORRECT.

22 **Q.** NOW, DO YOU MAKE AN ASSUMPTION AS TO WHETHER OR NOT SHE'S
23 GOING TO RECEIVE OVERTIME?

24 **A.** I DID MAKE AN ASSUMPTION ABOUT OVERTIME.

25 **Q.** SO PART OF THAT -- AND WHAT PERCENTAGE OF THIS NUMBER IS

1 YOUR ASSUMPTION OF OVERTIME?

2 **A.** I HAVE TO LOOK AT MY REPORT -- IT'S NOT IN THIS EXHIBIT --
3 TO TELL YOU THAT.

4 **Q.** LET ME ASK YOU THIS: IF SHE DIDN'T GET OVERTIME, WOULD
5 THAT AFFECT YOUR REPORT?

6 **A.** IT WOULD. BUT I UNDERSTATED OVERTIME IN MY REPORT.

7 **Q.** OKAY. AND FROM WHERE DID YOU GET THIS UNDERSTANDING OF
8 OVERTIME?

9 **A.** FROM HER PAY STATEMENT.

10 **Q.** FROM HER PAY STATEMENT?

11 **A.** YEAH. IT BREAKS OUT WHERE THE OVERTIME IS.

12 **Q.** SO YOU ASSUMED THAT WOULD HAPPENED FOR THE REST OF HER
13 WORK LIFE?

14 **A.** I DID.

15 **Q.** OKAY. THAT'S ALL I WANT TO KNOW IF THAT IS WHAT YOU
16 ASSUMED. OKAY?

17 NOW, THIS ASSUMPTION ABOUT GOING INTO THE FUTURE. DID YOU
18 MAKE AN ASSUMPTION AS TO HOW MUCH HER INCOME, HER PAY WOULD
19 CHANGE EACH YEAR?

20 **A.** YES.

21 **Q.** AND WHAT WAS THE BASIS OF THAT ASSUMPTION?

22 **A.** THAT WAS AN -- IT WAS AN AGREEMENT WITH THE UNION.

23 **Q.** YES.

24 **A.** AND IT HAD HER HOURLY WAGE WAS GOING TO INCREASE EVERY 12
25 MONTHS ESSENTIALLY.

1 Q. BUT THAT UNION AGREEMENT DIDN'T GO THROUGH THE BALANCE OF
2 HER WORK LIFE, DID IT?

3 A. NO. SO I HELD HER WAGES CONSTANT AFTER SHE RECEIVED 48
4 MONTHS AND I JUST LEFT IT THERE.

5 Q. SO YOU DIDN'T CHANGE IT AT ALL AFTER THAT?

6 A. NO. BECAUSE I HAVE ASSUMED THAT THERE WOULD BE, FOR
7 INSTANCE, COST-OF-LIVING INCREASES AND THAT'S BUILT INTO MY
8 NET DISCOUNT RATE. SO WHEN I AM DISCOUNTING THE NUMBERS, I'M
9 ASSUMING THERE IS A CERTAIN COMPONENT OF WAGE GROWTH AND THEN
10 THERE'S THE TIME VALUE OF MONEY.

11 Q. LET ME ASK YOU SOMETHING: DID YOU ASSUME THAT THAT
12 REFINERY WOULD BE OWNED AND OPERATED BY THE SAME COMPANY
13 THROUGHOUT THE BALANCE OF HER WORK LIFE?

14 A. WHAT I DID WAS -- WELL, WE SHOULD SAY, IT MAY NOT. OKAY?
15 IT MAY NOT.

16 Q. BUT DID YOU --

17 A. I MADE THAT ASSUMPTION BECAUSE AT THIS POINT IN TIME I
18 DON'T HAVE A BETTER ASSUMPTION TO MAKE.

19 Q. DID YOU DO ANY RESEARCH TO EVALUATE WITHIN THE LAST FIVE
20 YEARS HOW MANY REFINERIES IN THIS STATE HAVE ACTUALLY CHANGED
21 HANDS?

22 A. I DID.

23 Q. DID YOU FIND THAT THERE HAVE BEEN A NUMBER OF REFINERIES
24 THAT HAVE CHANGED HANDS IN THE LAST FIVE YEARS?

25 A. YES. THAT IS TRUE.

1 Q. AND SO THERE IS NO GUARANTEE IN THIS BUSINESS IN THE
2 FUTURE THAT ALL OF THESE REFINERIES BASED UPON YOUR RESEARCH
3 ARE GOING TO REMAIN IN THE SAME HANDS, IS THERE?

4 A. NO.

5 Q. THAT IS YOUR ASSUMPTION, RIGHT?

6 A. IT WASN'T MY ASSUMPTION. I NEEDED TO PROJECT FORWARD
7 WAGES AND BENEFITS.

8 Q. BUT FOR PURPOSES OF DOING THAT, YOU'RE ASSUMING THAT SHE'S
9 GOING TO REMAIN WITH THE SAME EMPLOYER FOR THOSE BENEFITS,
10 RIGHT?

11 A. I DON'T KNOW -- RIGHT NOW, FIRST OF ALL I WOULD SAY I
12 DON'T KNOW THAT THE REFINERY HAS BEEN DISCUSSED AS SHELL MAY
13 SELL IT SINCE 2017 THAT I AM AWARE OF IN MY RESEARCH BUT THEY
14 HAVEN'T.

15 Q. SO YOU ARE AWARE FROM YOUR RESEARCH, AND I AM ASSUMING
16 THOSE ARE IN MEDIA PUBLICATIONS, RIGHT?

17 A. THEY ARE IN MEDIA PUBLICATIONS.

18 Q. SO WHEN YOU'VE READ THAT, YOU CAME AWAY WITH THE
19 UNDERSTANDING THAT AT LEAST AS OF 2017, THERE ARE DISCUSSIONS
20 AND YOU DON'T KNOW IF SHELL IS GOING TO CONTINUE TO OPERATE
21 AND OWN THIS REFINERY, DO YOU?

22 A. CURRENTLY, WHAT IS UNDER DISCUSSION AS I UNDERSTAND IT IS,
23 THE PIPELINE THAT FEEDS THE REFINERY. IN 2017, THERE WAS SOME
24 DISCUSSION OF SELLING THE REFINERY BUT THAT SEEMS TO HAVE
25 ABATED A LITTLE BIT.

1 Q. BUT YOU DON'T KNOW IF THEY ARE GOING TO CONTINUE TO OWN
2 THIS REFINERY, DO YOU?

3 A. I DO NOT.

4 Q. SO, AND IF THEY NO LONGER OWN THIS REFINERY, AND IF SHE NO
5 LONGER WORKED THERE, WOULD THAT IMPACT YOUR FUTURE WAGE LOSS
6 CALCULATION?

7 A. IT MAY. BUT UNTIL WE KNOW TO WHAT EMPLOYER WOULD TAKE
8 OVER THE REFINERY AND WHAT BENEFITS THEY OFFER OR EVEN IF THEY
9 WOULD, THERE'S TO USE SOMETHING AS A PROXY FOR WHAT SHE WOULD
10 MAKE AS A PROCESS OPERATOR.

11 Q. SO --

12 A. SO I USED THE SHELL WAGES AND BENEFITS BECAUSE AT THE TIME
13 OF WRITING MY REPORT THAT IS THE BEST INFORMATION THAT WE
14 HAVE.

15 Q. I UNDERSTAND THAT. I HAVE THAT PIECE CLEAR. I HAVE
16 DIFFERENT QUESTIONS THOSE?

17 A. OKAY.

18 Q. IF SOMEONE ELSE PURCHASED THE REFINERY, YOU HAVE NO IDEA
19 AS TO WHETHER OR NOT SHE WOULD REMAIN, DO YOU? IF THEY WERE
20 THERE, YOU HAVE NO IDEA AS TO WHETHER OR NOT -- YOU DON'T
21 KNOW. YOU MAY SPECULATE AND GUESS BUT DON'T KNOW, RIGHT?

22 A. NO.

23 Q. OKAY. AND SO YOUR ASSUMPTION IS THAT IT'S NOT NEVER GOING
24 TO GET SOLD, SHE'S GOING TO REMAIN THERE, SHE'S NOT GOING TO
25 GET FIRED FOR SOMETHING ELSE IN THE FUTURE. ALL OF THOSE

1 THINGS ARE PART OF YOUR ASSUMPTION, RIGHT?

2 **A.** CORRECT.

3 **Q.** IF ANY OF THOSE THINGS WOULD HAPPEN, THAT WOULD ADVERSELY
4 IMPACT YOUR PROJECTION WITH REGARD TO FUTURE WAGE LOSS, RIGHT?

5 **A.** POSSIBLY, POSSIBLY NOT.

6 **Q.** IF SHE GOT FIRED, WOULDN'T THAT IMPACT THE CALCULATION FOR
7 FUTURE WAGE LOSS?

8 **A.** YES AND NO.

9 **Q.** WELL, YES, TO THE EXTENT THAT SHE WOULDN'T BE THERE ANY
10 MORE. SO YOU WOULDN'T ABLE TO CALCULATE THAT IN AS FUTURE
11 WAGE LOSS, CORRECT?

12 **A.** NOT NECESSARILY. IF YOU WOULD ALLOW ME TO CONTINUE, I CAN
13 EXPLAIN MY ANSWER.

14 **Q.** I'M ACTUALLY JUST WANTING TO KNOW THE ANSWER TO THAT
15 QUESTION WITH ALL RESPECT, OKAY?

16 **A.** OKAY.

17 **Q.** I GOT THE ASSUMPTION ABOUT FUTURE WAGE LOSS, OKAY? SO YOU
18 ASSUME, ONE, THERE IS GOING TO BE SOME INCREASES. YOU ASSUME,
19 TWO, THE REFINERY IS NEVER GOING TO GET SOLD. YOU ASSUME,
20 THREE, SHE IS NEVER GOING TO GET FIRED. YOU ASSUME, FOUR, WE
21 AREN'T GOING TO GET A BIG EARTHQUAKE. ALL OF THOSE ARE PART
22 OF YOUR ASSUMPTION, CORRECT?

23 **A.** WELL, FIRST OF ALL, LET'S GO BACK. WHEN I AM TALKING
24 ABOUT A WORK LIFE EXPECTANCY, I'M PROJECTING FORWARD THE
25 NUMBER OF YEARS SHE IS ACTIVE IN THE WORKFORCE, OKAY? SO 56.3

1 IS PROBABLY NOT WHEN SHE'S ACTUALLY GOING TO RETIRE. MOST
2 PEOPLE RETIRE WHEN THEY ARE OLDER THAN THAT. SO I HAVEN'T
3 GIVEN HER A LOT OF ACTIVE YEARS IN THE WAGE FORCE. CERTAINLY,
4 NOT ALL THE WAY TO 67. SO THAT ACCOUNTS FOR SOME TIME SPENT
5 OUTSIDE THE WORKFORCE.

6 LIKE, FOR INSTANCE, IF SHELL -- IF SHELL WERE TO SELL THE
7 REFINERY AND SHE HAD TO GO LOOK FOR ANOTHER REFINERY JOB, IT
8 ACCOUNTS FOR THE TIME SPENT OUT OF THE WORKFORCE FOR THAT LIFE
9 CHANGE.

10 Q. LET ME ASK YOU ANOTHER QUESTION HERE: NOW, YOU HAVE A
11 PROJECTION HERE ABOUT HER INCOME THAT SHE MAY GET IN THE
12 FUTURE IF SHE IS NOT WORKING AT SHELL, CORRECT?

13 A. CORRECT.

14 Q. DID YOU ASK -- DO YOU KNOW WHAT THE CONCEPT OF MITIGATION
15 IS?

16 A. I DO.

17 Q. TELL ME WHAT YOU UNDERSTAND IT TO BE?

18 A. MY UNDERSTANDING IS THAT IN ORDER TO MITIGATE, SHE HAS TO
19 TAKE A JOB COMPARABLE TO THE ONE THAT SHE LOST.

20 Q. AND SO, IF --

21 A. BUT MY UNDERSTANDING ALSO IS THAT IT IS THE RESPONSIBILITY
22 OF THE DEFENDANT --

23 Q. I'M NOT ASKING FOR THAT.

24 A. OKAY.

25 Q. LET ME ASK YOU A COUPLE OF QUESTIONS ABOUT MITIGATION. IF

1 SHE HAS INCOME, YOU WOULD SUBTRACT THAT FROM WHAT SHE WOULD
2 HAVE EARNED AT SHELL, CORRECT?

3 A. THAT'S CORRECT.

4 Q. IF SHE HAD THE POTENTIAL TO MAKE MORE INCOME THAN WHAT SHE
5 HAD, YOU ALSO SUBTRACT THAT TOO, DON'T YOU? IF THERE WERE
6 OPPORTUNITIES FOR HER WHERE SHE COULD HAVE MADE MORE MONEY AND
7 SHE DIDN'T TAKE THEM, THAT'S THE MITIGATION PIECE, ISN'T IT?

8 A. WHAT I HAVE DONE IS REFLECT WHAT ACTUALLY HAPPENED. THIS
9 IS --

10 Q. THAT NOT MY QUESTION.

11 A. BUT THIS IS WHAT SHE COULD HAVE MADE AND THIS IS WHAT SHE
12 HAS MADE.

13 Q. MY QUESTION IS: MITIGATION IS THAT PIECE THAT IS THE
14 DIFFERENCE BETWEEN WHAT SHE HAS BEEN MAKING NOW AND WHAT SHE
15 COULD HAVE MADE HAD SHE ACTUALLY PURSUED A HIGHER PAYING JOB,
16 CORRECT?

17 A. NO.

18 Q. OKAY.

19 A. NO.

20 Q. SO IF SHE COULD HAVE MADE A HIGHER -- COULD BE PAID MORE
21 RIGHT NOW THAN WHAT SHE IS, CAN YOU DO A CALCULATION TO
22 DETERMINE WHAT THE IMPACT THAT WOULD HAVE BEEN WITH REGARD TO
23 FUTURE WAGE LOSS?

24 A. YES. IF I CAN GO OFF AND PULL UP MY EXCEL FILES AND THAT
25 SORT OF THINGS, YES.

1 Q. I'M GOING TO ASK YOU SOMETHING. IF THE OPPORTUNITY
2 EXISTED FOR HER TO WORK IN ANOTHER REFINERY, SAME WAGES, SAME
3 BENEFITS, WOULD THAT HAVE IMPACTED YOUR FUTURE WAGE LOSS
4 CALCULATION?

5 A. IF IT HAD BEEN PROVEN THAT SHE COULD SECURE A JOB --

6 Q. YES.

7 A. SO FAR, SHE HAS NOT.

8 Q. ALL OF THAT. ASSUME ALL OF THAT. FOR PURPOSE -- FOR
9 PURPOSES OF MY QUESTION, ASSUME THAT SHE COULD GET THE JOB.

10 A. ASSUME THAT SHE COULD GET THE JOB. OKAY. AFTER SHE WAS
11 TERMINATED FROM SHELL?

12 Q. YES.

13 A. OKAY.

14 Q. ASSUME THAT.

15 A. OKAY. THEN --

16 Q. WOULD THAT IMPACT HER FUTURE WAGE LOSS?

17 A. IT WOULD.

18 Q. IT WOULD BRING IT TO ZERO, WOULDN'T IT?

19 A. WELL, IT DEPENDS ON WHICH REFINERY AND WHAT THEIR PAY AND
20 BENEFITS ARE.

21 Q. I SAID SAME BENEFITS AND SAME PAY?

22 A. WELL --

23 Q. I SAID SAME BENEFITS AND SAME PAY.

24 A. SAME BENEFIT AND PAY, YEAH.

25 Q. IT WOULD BE ZERO, WOULDN'T IT?

1 **A.** EXCEPT FOR THE TIME FROM HER TERMINATION TO THE TIME OF
2 RE-EMPLOYMENT, YEAH, IT WOULD BE ZERO.

3 **Q.** I SAID WAIVE FUTURE, IT WOULD BE ZERO, CORRECT?

4 **A.** CORRECT.

5 **Q.** OKAY. NOW, IF THERE WAS A POINT IN TIME, SAY
6 FEBRUARY 2017, WHEN SHE COULD HAVE OBTAINED A JOB THAT HAD THE
7 SAME PAY, SAME BENEFITS, THAT WOULD HAVE IMPACTED YOUR PAST
8 LOSS, RIGHT?

9 **A.** IT WOULD.

10 **Q.** SO DID ANYONE FROM THE PLAINTIFF'S SIDE EVER ASK YOU TO
11 MAKE AN ASSUMPTION THAT SHE COULD HAVE GOTTEN A JOB THAT PAYS
12 WHAT SHE'S GETTING -- WHAT SHE WAS GETTING AT SHELL WITH THE
13 SAME BENEFITS, DID ANYONE ASK YOU TO MAKE THAT ASSUMPTION?

14 **A.** THEY DID NOT.

15 **Q.** OKAY.

16 DID ANYONE ASK YOU TO TAKE A LOOK AT -- BUT YOU DID ASK A
17 QUESTION OF HER DIRECTLY, DIDN'T YOU, ABOUT APPLYING FOR JOBS
18 AT OTHER REFINERIES?

19 **A.** CORRECT.

20 **Q.** YOU TALKED TO HER ON THE PHONE, RIGHT?

21 **A.** I DID.

22 **Q.** AND YOU ASKED HER IF SHE HAD APPLIED FOR JOBS IN OTHER
23 REFINERIES, RIGHT?

24 **A.** THAT'S CORRECT.

25 **Q.** WHAT DID SHE SAY TO YOU?

1 **A.** SHE SAID -- SHE SAID THAT RIGHT AFTER HER TERMINATION, SHE
2 DID NOT WANT TO RE-ENTER THAT ENVIRONMENT.

3 **Q.** OKAY. SO SHE SAID THAT THE DECISION NOT TO APPLY FOR
4 THESE JOBS WAS SOLELY HERS, RIGHT?

5 **A.** FOR A SHORT TIME. I BELIEVE SHE DID APPLY FOR ANOTHER
6 PROCESS OPERATOR JOB AT BUDWEISER AND DID NOT GET TO AN
7 INTERVIEW.

8 **Q.** I'M TALKING ABOUT REFINERY JOBS. DID SHE TELL YOU THAT
9 SHE HAD EVER APPLIED FOR A REFINERY JOB?

10 **A.** NO.

11 **Q.** OKAY.

12 **A.** SHE DID NOT TELL ME SHE APPLIED FOR REFINERY JOB.

13 **Q.** SO NOW, WHEN YOU SAY THE LIFE WORK -- THERE IS A PHRASE
14 YOU USE, WORK EXPECTANCY. WHAT IS THAT?

15 **A.** IT'S RIGHT UP HERE (INDICATING). WORK LIFE EXPECTANCY.

16 **Q.** AND HOW -- AT WHAT AGE DID YOU CALCULATE SHE WOULD BE AT
17 AT THAT POINT?

18 **A.** 56.3.

19 **Q.** 56. NOW, DID YOU DO ANYTHING TO DETERMINE WHAT THE WORK
20 LIFE EXPECTANCY IS OF INDIVIDUALS WHO WORK AT THE REFINERY?

21 **A.** I WAS NOT PROVIDED WITH THAT DATA.

22 **Q.** SO YOU DON'T KNOW IF THAT IMPACTS YOUR CALCULATION AT ALL,
23 DO YOU?

24 **A.** NO.

25 **Q.** NOW, LET'S TALK ABOUT HER PAST, HER FUTURE WAGES.

1 NOW, RIGHT NOW YOU UNDERSTAND SHE WORKS AT ALASKA
2 AIRLINES, RIGHT?

3 **A.** CORRECT.

4 **Q.** I THOUGHT I HEARD YOU SAY THAT YOU DIDN'T CALCULATE THAT
5 SHE WOULD CONTINUE WORKING AT ALASKA AIRLINES AT THE SAME RATE
6 OF PAY. DID YOU SAY THAT?

7 **A.** I DID NOT.

8 **Q.** YOU DIDN'T DO THAT --

9 **A.** I DID THAT I THINK THROUGH 2018, AND THEN BEGINNING IN
10 2019, I BEGAN TO GROW HER WAGES A LITTLE BIT.

11 **Q.** SO YOU THEN ADJUSTED AND YOU SAID WELL, I'M GOING TO TAKE
12 WOMEN WHO ARE NOT COLLEGE GRADUATES AND SOME PROJECTION BASED
13 ON THAT, RIGHT?

14 **A.** THAT'S CORRECT.

15 **Q.** NOW, DOES THAT -- SO WHAT ALL TYPES OF JOBS ARE ACTUALLY
16 ROLLED UP IN THERE? ARE FOOD SERVICE PEOPLE ROLLED UP IN THAT
17 NUMBER?

18 **A.** YOU KNOW, IT DOESN'T BREAK OUT THE DATA THAT WAY. IT JUST
19 BREAKS IT OUT BY RACE AND GENDER.

20 **Q.** AND SO YOU DON'T KNOW IF SHE'S ALREADY -- YOU DON'T KNOW
21 IF SHE HAS THE POTENTIAL TO HAVE INCOME GREATER THAN WHAT THAT
22 AVERAGE IS, DO YOU?

23 **A.** I DON'T.

24 **Q.** NOW, THAT AVERAGE THAT YOU ARE LOOKING AT, IS THAT
25 GEOGRAPHIC?

1 **A.** IT'S A NATIONAL AVERAGE AND I HAVE ADJUSTED IT TO THE SAN
2 FRANCISCO BAY AREA.

3 **Q.** LET ME SEE IF I UNDERSTAND IT. IT IS A NATIONAL AVERAGE
4 MEANING IT HAS ALABAMA, MISSISSIPPI, LOUISIANA, MISSISSIPPI IN
5 IT, RIGHT?

6 **A.** IT DOES.

7 **Q.** AND SO NOW, WHEN YOU MADE AN ADJUSTMENT TO IT, DID YOU USE
8 SOME PUBLISHED DOCUMENT FOR PURPOSES OF DOING THAT?

9 **A.** I DID.

10 **Q.** OKAY. AND SO YOU ADJUSTED IT FOR WHAT, CALIFORNIA?

11 **A.** NO. I ADJUSTED IT FOR THE SAN FRANCISCO BAY AREA.

12 **Q.** OKAY. SO NOW, IF I THINK I UNDERSTAND A COUPLE OF THINGS
13 ABOUT YOUR CALCULATION, OKAY?

14 IF SHE, ONE, THERE IS NO GUARANTEE THAT SHE IS GOING TO BE
15 WORKING AT THIS -- IF SHE HAD STAYED THERE, THAT SHE WOULD BE
16 WORKING AT THIS REFINERY UNTIL THE END MUCH HER WORK LIFE
17 EXPECTANCY, RIGHT?

18 **A.** NO. BUT WE HAVE ASSUMED THAT --

19 **Q.** I JUST WANT TO KNOW THAT. THERE IS NO GUARANTEE, RIGHT?

20 **A.** NO.

21 **Q.** OKAY. AND SO YOU GO ON TO MAKE AN ASSUMPTION THAT THAT
22 WILL HAPPEN, RIGHT?

23 **A.** CORRECT.

24 **Q.** NUMBER TWO. YOU MAKE AN ASSUMPTION THAT SHE'S NEVER, EVER
25 GOING TO GO TO COLLEGE GET A DEGREE OR DO ANYTHING TO IMPROVE

1 HER ECONOMIC STATUS, RIGHT?

2 A. MY UNDERSTANDING IS THAT TO MITIGATE, SHE IS NOT REQUIRED
3 TO RETURN TO SCHOOL.

4 Q. THAT WAS NOT MY QUESTION. MY QUESTION IS REALLY SIMPLE.
5 YOU MAKE AN ASSUMPTION THAT SHE'S NOT GOING TO --

6 A. NO.

7 Q. -- DO ANYTHING TO IMPROVE HER ECONOMIC STATUS, RIGHT?

8 A. NO. I'VE TAKEN HER AS SHE IS.

9 Q. YOU REALIZE IF SHE WERE TO SAY GO TO COLLEGE NOW, OR GO TO
10 A TRAINING SCHOOL, OR ANY NUMBER OF THINGS, SHE COULD IMPROVE
11 HER ECONOMIC POTENTIAL, RIGHT?

12 A. WELL, IT DEPENDS ON WHAT JOB SHE TAKES AFTER GRADUATING
13 FROM --

14 Q. RIGHT.

15 A. -- COLLEGE, AND SHE WOULD ALSO -- YOU KNOW, THAT WOULD BE
16 FOUR YEARS OUT OF THE WORKFORCE WHERE WERE SHE TO GO FULL
17 TIME. SO THERE WOULD BE SOME LOSS ASSOCIATED WITH THAT.

18 Q. THEN YOU ASSUME SHE IS NOT GOING TO APPLY FOR AND GET A
19 JOB IN A REFINERY OR WITH COMPARABLE PAY AND BENEFITS AT THE
20 REFINERY, CORRECT?

21 A. CORRECT.

22 Q. AND IF ANY OF THOSE THINGS HAPPEN, IT COULD BRING HER
23 FUTURE LOSS DOWN TO ZERO OR ACTUALLY MEAN THAT SHE MAKES MORE
24 MONEY, RIGHT? IF ANY OF THOSE THINGS HAPPEN --

25 A. IT'S -- IT'S POSSIBLE.

1 Q. THAT IS ALL I'M ASKING?

2 A. IT IS POSSIBLE BUT I'M NOT SURE IT IS PROBABLE.

3 Q. WE DON'T KNOW WHAT THE FUTURE HOLDS, DO WE?

4 A. WELL, I --

5 Q. ONLY THING I'M ASKING IS THIS. I DON'T KNOW IF I'M GOING
6 TO GET HIT WHEN I WALK OUTSIDE THIS DOOR, DO I?

7 A. NO. BUT IT'S PROBABLE --

8 Q. THAT IS ALL I'M ASKING.

9 A. -- THAT YOU WON'T.

10 Q. THIS WEEK I THOUGHT I WOULDN'T HAVE THIS THING ON MY KNEE
11 BUT I DO. OKAY? I DON'T KNOW WHAT THE PROBABLE IS. THE ONLY
12 THING I'M GOING TO GO TO NOW IS THIS: WITH REGARD TO -- SO AT
13 THE END OF THE DAY, THESE NUMBERS THAT YOU ARE USING ARE ALL
14 PREDICATED ON ASSUMPTIONS, RIGHT?

15 A. YES.

16 Q. AND IF YOUR ASSUMPTIONS DON'T HOLD, THEN THE CALCULATIONS
17 DON'T WORK, RIGHT? IF THE ASSUMPTIONS ARE -- DON'T HOLD, THEN
18 THAT IMPACTS YOUR CALCULATIONS, RIGHT?

19 A. THE ASSUMPTIONS DO IMPACT THE CALCULATIONS, THEY DO.

20 Q. OKAY. AND IN DOING THESE CALCULATIONS, DID YOU TALK TO
21 ANYBODY AT SHELL?

22 A. NO.

23 Q. OKAY. DOING THESE CALCULATIONS, DID YOU TALK TO HER ABOUT
24 WHETHER OR NOT SHE INTENDED TO GO TO COLLEGE OR GET A DEGREE
25 OR IMPROVE HER POSITION IN LIFE?

1 **A.** I DON'T KNOW IF WE TOUCHED ON THAT SPECIFICALLY. MY
2 UNDERSTANDING WAS AT THIS TIME SHE DOES NOT.

3 **Q.** I WANT TO KNOW IF YOU ASKED HER, OKAY?

4 **MR. LAFAYETTE:** I DON'T HAVE ANY FURTHER QUESTIONS,
5 YOUR HONOR.

6 **THE COURT:** ANY REDIRECT?

7 **MR. ETTINGHOFF:** YES.

8 **REDIRECT EXAMINATION**

9 **BY MR. ETTINGHOFF:**

10 **Q.** MS. OSTROFE, WERE YOU RETAINED AS EXPERT ABOUT PLAINTIFF'S
11 MITIGATION AND JOB SEARCH?

12 **A.** NO.

13 **Q.** AND MR. LAFAYETTE WAS ASKING YOU A QUESTION ABOUT THE
14 ASSUMPTIONS YOU MADE WHEN YOU CALCULATED HER FUTURE WAGE LOSS.
15 IS THERE SOMETHING ELSE YOU WANTED TO EXPLAIN ABOUT THAT?

16 **MR. LAFAYETTE:** OBJECTION, VAGUE AND AMBIGUOUS.

17 **THE COURT:** YOU CAN LEAD A LITTLE. BRING US BACK TO
18 WHAT YOU ARE TALKING ABOUT.

19 SUSTAINED.

20 **BY MR. ETTINGHOFF:**

21 **Q.** WHEN YOU WERE MAKING THE COMPARISON BETWEEN WHAT SHE WAS
22 EARNING, YOU WERE USING WHAT SHE WAS EARNING WITH HER WORK
23 LIFE EXPECTANCY, NOT WHAT SHE WAS CURRENTLY EARNING AT SHELL,
24 CORRECT?

25 **A.** I AM SORRY. YOU NEED TO CLARIFY WHAT YOU MEAN.

1 Q. THE COMPARISON IS NOT BETWEEN WHAT SHE IS CURRENTLY
2 EARNINGS BUT REALLY IT IS WOMAN WITH A HIGH SCHOOL DEGREE IN
3 THE BAY AREA, CORRECT?

4 A. CORRECT. THOSE ARE AVERAGE EARNINGS FOR WOMEN WITH THAT
5 DEMOGRAPHIC CHARACTERISTIC.

6 Q. DO YOU KNOW HOW LONG SHELL HAS OWNED THE MARTINEZ
7 REFINERY?

8 A. I DO --

9 MR. LAFAYETTE: OBJECTION.

10 THE COURT: OVERRULED.

11 THE WITNESS: I DO NOT KNOW HOW LONG. I KNOW THE
12 REFINERY HAS BEEN THERE OVER A HUNDRED YEARS AND I HAVE SEEN
13 FIGURES FROM IT IS 102 YEARS OLD THROUGH 115 YEARS OLD. SO IT
14 HAS BEEN THERE FOR A VERY LONG TIME.

15 MR. ETTINGHOFF: THANK YOU. NO FURTHER QUESTIONS.

16 THE COURT: ANYTHING ON THOSE QUESTIONS?

17 MR. LAFAYETTE: NO, YOUR HONOR.

18 THE COURT: ALL RIGHT. YOU ARE EXCUSED. THANK YOU.
19 NEXT WITNESS.

20 THE CLERK: DOES SHE HAVE A WITNESS BINDER?

21 THE WITNESS: NO, IT IS MY BINDER.

22 MS. NUGENT: YOUR HONOR, THE PLAINTIFF CALLS RAY
23 JONES.

24

25

1 **(RAY JONES,** CALLED AS A WITNESS FOR THE PLAINTIFF, HAVING
2 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

3 **THE WITNESS:** I WILL.

4 **THE CLERK:** PLEASE TAKE A SEAT. MOVE THE MICROPHONE
5 UP TO YOU, AND THEN PLEASE STATE YOUR FULL NAME AND SPELL YOUR
6 LAST NAME.

7 **THE WITNESS:** GOOD MORNING. MY NAME IS GALEN RAY
8 JONES, JUNIOR. AND I HOPE -- I HAVE A VERY LOUD VOICE, SO I
9 HOPE I AM NOT TALKING TOO LOUDLY.

10 **THE COURT:** WE'LL FIX IT.

11 **THE WITNESS:** I GO BY RAY JONES. I'M A JUNIOR AND MY
12 FATHER TAKES THE GALEN NAME.

13 **THE COURT:** J-O-N-E-S?

14 **THE WITNESS:** J-O-N-E-S.

15 **THE COURT:** GOOD MORNING, SIR. YOU MAY PROCEED.

16 **THE WITNESS:** GOOD MORNING.

17 **MS. NUGENT:** THANK YOU, YOUR HONOR.

18 **DIRECT EXAMINATION**

19 **BY MS. NUGENT:**

20 **Q.** MR. JONES, DID YOU RECEIVE A SUBPOENA TO BE HERE TODAY?

21 **A.** YES, I DID.

22 **Q.** WHERE DO YOU WORK?

23 **A.** I WORK AT SHELL MARTINEZ REFINERY IN MARTINEZ, CALIFORNIA.

24 **Q.** HOW LONG HAVE YOU WORKED AT THE SHELL MARTINEZ REFINERY?

25 **A.** I WAS HIRED AT SHELL MARTINEZ IN 1995 AS AN OPERATOR AS

1 PART OF THE CLEAN FUELS PROJECT.

2 Q. HAVE YOU WORKED THERE EVER SINCE?

3 A. YES.

4 Q. THE CLEAN FUELS PROJECT, IS THAT IN A CERTAIN DEPARTMENT?

5 A. THAT EVENTUALLY BECAME THE DELAYED COKING DEPARTMENT BUT
6 AT THAT TIME WE WERE COMMISSIONING A WIDE RANGE OF NEW PROCESS
7 UNITS. WE HAD A COGENERATION UNIT, AN ISOMERIZATION UNIT, AND
8 A COUPLE OF HYDROTREATERS UNITS AS WELL AS IN SMALLER COOLING
9 TOWERS AND FLARE SYSTEMS.

10 Q. OKAY. WOW. THAT IS A LOT OF EQUIPMENT. LET'S GO BACK TO
11 WHAT YOU SAID ABOUT DELAYED COKING.

12 A. OKAY.

13 Q. IS THAT A DEPARTMENT THAT YOU WORKED IN?

14 A. YES. I SPENT THE BULK OF MY CAREER, I WOULD SAY 15 OR 16
15 YEARS, WORKING AS AN OPERATOR IN THE DELAYED COKING
16 DEPARTMENT.

17 Q. IS THE -- THAT DEPARTMENT, DELAYED COKING, IS THAT PART OF
18 A LARGER UNIT?

19 A. IT'S PART OF A -- YEAH. THEY DIVIDE UP THE COMPLEX INTO
20 DIFFERENT TYPES OF OIL PROCESSING DESCRIPTORS.

21 DELAYED COKING IS PART OF THE HOP, WHICH STANDARDS FOR
22 HEAVY OIL PROCESSING. SO THE DELAYED COKER IS PART OF THAT.
23 ALTHOUGH THEY DO PROCESS SOME OF THE LIGHTER OIL. THE
24 ISOMERIZATION UNIT IS PART OF LIGHTER GASOLINE PROCESSING BUT
25 THEY ALSO HAVE THE HEAVY GAS PROCESSING AND THE COKER.

1 Q. LET'S -- DO YOU HAVE ANY EXPERIENCE WITH THE OPCEN
2 DEPARTMENT?

3 A. YES. I BECAME --

4 Q. WHAT IS --

5 A. I'M SORRY.

6 Q. I WILL HELP YOU WITH THE QUESTIONS AND THE ANSWERS.

7 A. OKAY. I DO HAVE EXPERIENCE WORKING IN OPCEN DURING
8 TURNAROUNDS.

9 Q. WHAT DOES THAT MEAN, DURING TURNAROUNDS?

10 A. THOSE ARE BIG PERIODS TYPICALLY IN OPCEN WHEN THEY DO THE
11 FLEXICOKER. IT IS A 60-DAY PERIOD OF TIME WHERE THEY SHUT
12 DOWN THE UNIT AND THEY DO A LOT OF MAINTENANCE ON THE
13 EQUIPMENT THERE.

14 Q. HOW OFTEN ARE THERE TURNAROUNDS?

15 A. IT DEPENDS ON THE UNIT. TYPICALLY, IT IS AROUND THREE TO
16 FOUR YEARS FOR THE FLEXICOKER. AND SOME UNITS ARE SHORTER
17 THAN THAT OR LONGER THAN THAT, BASED ON THE TYPES OF MATERIAL
18 THAT THEY PROCESS.

19 Q. WHEN WAS THE LAST TIME YOU PARTICIPATED IN A TURNAROUND IN
20 THE OPCEN DEPARTMENT?

21 A. I BELIEVE IT WAS 2016, WAS THE LAST FLEXICOKER TURNAROUND.
22 THEY ALSO HAVE TURNAROUNDS IN THEIR SULFUR PROCESSING UNITS
23 THAT ARE PART OF SMALLER TURNAROUND BLOCKS. AND WE WORK ON
24 THOSE AS WELL WITH OUR SAFETY TEAM.

25 Q. I WANT TO TALK JUST BRIEFLY ABOUT YOUR BACKGROUND BEFORE

1 SHELL.

2 A. OKAY.

3 Q. WHERE DID YOU BEFORE SHELL?

4 A. PRIOR TO BEING HIRED BY SHELL, I WAS AN OPERATOR AND A
5 CONTRACTOR AT THE DOW CHEMICAL PLANT IN PITTSBURG, CALIFORNIA.

6 Q. HOW LONG DID YOU WORK THERE?

7 A. I WORKED AS AN OPERATOR FOR FIVE YEARS FROM 1990 TO 1995,
8 AND THEN I WORKED APPROXIMATELY TWO YEARS AS A
9 CONTRACTOR/OPERATOR FOR A KCL DRYER UNIT IN THE SPECIALTY
10 CHEMICALS DEPARTMENT. AND THEN BEFORE THAT I WAS IN THE
11 GENERAL LABORER POOL FOR CONTRACTING COMPANY AT THAT SITE.

12 Q. YOU TALKED ABOUT WORKING IN DELAYED COKING. IS THAT STILL
13 YOUR JOB AT THE SHELL REFINERY IN MARTINEZ?

14 A. NO.

15 Q. WHAT IS YOUR JOB NOW?

16 A. I'M CURRENTLY SERVING AS THE UNITED STEELWORKER HEALTH AND
17 SAFETY REPRESENTATIVE.

18 Q. WHAT DO YOU DO AS THE UNITED STEELWORKER HEALTH AND SAFETY
19 REPRESENTATIVE OUT THERE AT THE REFINERY?

20 A. PROBABLY THE EASIEST WAY, I AM AN ADVOCATE OR
21 REPRESENTATIVE FOR OUR BROTHERS AND SISTERS THAT WORK IN THE
22 COMPLEX. ANYTIME THEY HAVE AN ISSUE THAT THEY ARE CONCERNED
23 ABOUT OR THAT WE HAVE BECOME CONCERNED ABOUT, THEN WE ADVOCATE
24 ON THEIR BEHALF TO TRY TO ELIMINATE, MITIGATE, OR IMPROVE
25 WHATEVER SITUATION THAT WE'RE CONCERNED ABOUT.

1 Q. YOU MENTIONED HEALTH AND SAFETY. IS THAT PART OF YOUR
2 TITLE NOW?

3 A. I -- MY ROLE IS LOCATED IN THE HEALTH AND SAFETY
4 DEPARTMENT.

5 Q. AND WHAT PART OF YOUR ROLE HAS TO DO WITH HEALTH AND
6 SAFETY? WHAT DOES THAT MEAN?

7 A. MY ROLE, THE WHOLE FOCUS IS IN REGARDS TO PERSONAL HEALTH
8 AND SAFETY. IT CAN BE ANYTHING FROM THE PERSONAL PROTECTIVE
9 EQUIPMENT, THE PPE THAT PEOPLE ARE PROVIDED. IT CAN BE
10 EXPOSURES TO CHEMICALS IN THEIR RESPECTIVE WORK SITES OR IT
11 COULD BE -- MOST RECENTLY, WE HAD SOME NEW STATE LAWS THAT
12 REQUIRED SHELL TO CREATE A STOP WORK AUTHORITY PROCEDURE FOR
13 THE EMPLOYEES TO BE ABLE TO STOP A WORK -- ANY KIND OF WORK
14 THAT THEY FEEL COULD INJURE THEM --

15 Q. OKAY.

16 A. -- OR A COWORKER. SO WE HAD TO CREATE THAT FROM SCRATCH
17 WORKING WITH MANAGEMENT.

18 Q. OKAY. I WANT TO TALK A LITTLE BIT ABOUT YOUR SAFETY AND
19 TRAINING ESPECIALLY.

20 HAVE YOU TAKEN ANY TRAINING IN ANY HEALTH AND SAFETY
21 TOPICS THAT HELP YOU WITH THE THINGS YOU JUST DESCRIBED THAT
22 ARE PART OF YOUR ROLE?

23 A. YES. JUST TO BE AN OPERATOR, THEY START YOU OFF TAKING
24 FIRE TRAINING. SO I'VE ATTENDED UNIVERSITY OF NEVADA AT RENO
25 FIRE TRAINING. I'VE ALSO RECEIVED TECHNICAL RESCUE TRAINING.

1 I WAS PART OF THE SHELL HIGH-ANGLE RESCUE, THE SHARK TEAM.
2 I'VE ATTENDED OSHA 40-HOUR GENERAL INDUSTRY TRAINING THROUGH
3 THE UNITED STEELWORKERS SAFETY CONFERENCES.

4 I'VE ATTENDED PROCESS SAFETY MANAGEMENT TRAINING THROUGH
5 CAL OSHA HERE IN OAKLAND THAT I FELT WAS VERY VALUABLE IN
6 REGARDS TO PROCESS SAFETY BECAUSE IT'S THE ACTUAL TRAINING
7 COURSE THAT THEY PUT THEIR INSPECTORS TO. I FELT LUCKY TO BE
8 INVITED TO GO THROUGH THAT TRAINING.

9 AND I HAVE ATTENDED NUMEROUS, MORE FOCUSED WORKSHOPS
10 THROUGH THE UNITED STEELWORKERS HEALTH AND SAFETY CONFERENCES
11 IN PITTSBURGH THAT ARE HELD EVERY 18 MONTHS.

12 Q. LET'S TURN NOW TO SOME OF THE SPECIFIC EVENTS IN THIS
13 CASE.

14 FIRST OF ALL, DO YOU KNOW THE PLAINTIFF, CIARA NEWTON?

15 A. I DO.

16 Q. HOW DO YOU KNOW HER?

17 A. WHEN SHE FIRST INTERVIEWED, I WAS ONE OF THE INTERVIEWERS.
18 THE WAY SHELL MARTINEZ DOES THEIR INTERVIEW PROCESS FOR
19 POTENTIAL EMPLOYEES IS THEY PAIR PERSON PICKED BY THE UNION
20 WITH A SHELL STAFF PERSON AND THEY ADMINISTER A PRESCRIBED SET
21 OF QUESTIONS AND TEMPLATE WITH -- IN A WAY THAT EXPLAINS HOW
22 TO SCORE THE ANSWERS. AND THAT IS THE FIRST TIME I MET CIARA.

23 Q. DO YOU REMEMBER HER INTERVIEW?

24 A. I DO. SHE DID QUITE WELL DURING THE INTERVIEW PROCESS.
25 AND I CAN'T RECALL IF SHE WAS THE HIGHEST SCORING APPLICANT

1 FOR THE ENTIRE THREE-DAY PROCESS OR JUST FOR THAT DAY, BUT
2 MYSELF AND KEVIN GOLDSBERRY, WHO IS AN STL AND LOP, SHE WAS
3 ONE OF OUR HIGHEST SCORING APPLICANTS FOR THAT INTERVIEW
4 PROCESS.

5 Q. YOU USED A COUPLE OF ACRONYMS THERE. STL IS SHIFT TEAM
6 LEADER; IS THAT RIGHT?

7 A. SHIFT TEAM LEADER, YES.

8 Q. WHAT IS LOP?

9 A. THAT WOULD BE THE LOP. THAT WOULD BE LIGHT OIL
10 PROCESSING. I APOLOGIZE. WE HAVE SO MANY ACRONYMS IN THE OIL
11 REFINING SECTOR. THANK YOU FOR CALLING THAT OUT.

12 Q. NO PROBLEM. OKAY. IT SOUNDS LIKE YOU PARTICIPATED IN
13 MORE INTERVIEWS THAN JUST THE ONE THAT YOU CONDUCTED FOR CIARA
14 NEW, IS THAT TRUE?

15 A. THAT IS CORRECT. I WOULD SAY SIX TO EIGHT THAT I CAN --
16 THAT WOULD BE A PRETTY GOOD GUESS ON MY PART.

17 Q. DO YOU RECALL ANY OF THE SCORES THAT SHE HAD ON ANY OF THE
18 ENTRANCE EXAMS THAT YOU REFERRED TO?

19 A. I RECALL ONE OF THE ANSWERS THAT SHE GAVE ABOUT -- SHE HAD
20 A CONCERN -- HER JOB IT WAS IN SOME DENTAL OFFICE, AND SHE
21 FELT SHE COULD CREATE A SAFER AND MORE EFFICIENT WAY TO
22 HANDLING ONE OF THE PROCESSES IN THAT JOB. AND SHE JUST DID A
23 VERY GOOD JOB OF DESCRIBING HER THOUGHT PROCESS AND THE IDEAS
24 THAT SHE WAS ABLE TO SUCCESSFULLY IMPLEMENT, WHICH MADE HER
25 SCORE VERY HIGH ON THE QUESTION. SHE HAD ALL THE POINTS THAT

1 THEY WERE LOOKING FOR ON THAT QUESTION.

2 Q. OKAY.

3 SO AFTER MS. NEWTON WAS HIRED AT SHELL, DID YOU HAVE ANY
4 INTERACTIONS WITH HER AFTER THAT?

5 A. WE PARTICIPATE IN THE INITIAL TRAINING THAT THEY HAVE WHEN
6 THEY FIRST BEGIN. I SAW HER IN CLASS, AND I THINK THE NEXT
7 TIME THAT I HAD FOCUSED AMOUNT OF TIME WAS WHEN I WAS CALLED
8 TO SHOW UP FOR SOME SORT OF DISCIPLINARY INVESTIGATION.

9 Q. OKAY. LET'S TALK ABOUT THAT.

10 A. OKAY.

11 Q. DO YOU RECALL WHAT TIME PERIOD THAT WAS?

12 A. I BELIEVE IT WAS SOMETIME IN AUGUST --

13 Q. OKAY.

14 A. -- AFTER SHE INITIALLY BEEN HIRED IN 2016.

15 Q. 2016? OKAY. YOU SAID IT WAS A MEETING?

16 A. YEAH.

17 Q. TELL ME HOW IT WAS THAT YOU BECAME A PARTICIPANT IN THAT
18 MEETING?

19 A. OKAY.

20 THE UNION REPS AT OUR SITE TYPICALLY ARE ALSO STEWARDS.
21 EACH UNIT, WE TRY TO HAVE STEWARDS IN EACH OF OUR UNITS
22 BECAUSE THEY HAVE MORE SPECIALIZED KNOWLEDGE AND THEY CAN
23 BETTER REPRESENT OUR MEMBERS WHEN THEY ARE CALLED IN TO BE
24 INTERVIEWED FOR DISCIPLINE. BUT I HAD RECEIVED A CALL FROM
25 NICK BACKENS ASKING ME IF I CAN SHOW UP. HE WAS CONCERNED

1 THAT THE -- THIS MEETING COULD TURN INTO A TERMINATION
2 MEETING.

3 Q. DID HE TELL YOU ANYTHING ELSE AT THAT INITIAL TIME?

4 A. DURING THE PHONE CALL?

5 Q. YES.

6 A. THAT HE WAS SCARED THAT IT WAS GOING TO TURN INTO A
7 TERMINATION AND HE FELT LIKE HE NEEDED SOME HELP.

8 Q. AND SO YOU DID ATTEND THE MEETING. WHO ELSE WAS IN THE
9 MEETING?

10 A. CHRISTINE LAYNE I RECALL WAS THERE. CIARA WAS THERE.
11 MYSELF. NICK BACKENS.

12 Q. ANYONE ELSE?

13 A. I'M DRAWING A BLANK RIGHT NOW. THERE POSSIBLY COULD HAVE
14 BEEN ANOTHER EITHER MANAGEMENT PERSON OR POSSIBLY ANOTHER HR
15 PERSON. I CAN'T RECALL.

16 Q. DO YOU RECALL WHAT TOPICS WERE DISCUSSED?

17 A. IF I COULD --

18 Q. SURE.

19 A. -- TAKE A QUICK SIP OF WATER?

20 Q. SO WE WERE TALKING ABOUT THE AUGUST 2ND MEETING AND YOU'VE
21 ALREADY IDENTIFIED THE PARTICIPANTS YOU REMEMBER; MS. LAYNE,
22 MR. BACKENS, MS. NEWTON, OF COURSE, AND YOU -- YOU THINK THERE
23 MAY HAVE BEEN ONE OTHER PERSON. WHAT TOPICS WERE DISCUSSED?

24 A. OKAY.

25 AS BEST I CAN RECALL, THERE WERE A COUPLE OF ISSUES ABOUT

1 WHAT TIME SHE HAD SHOWN UP FOR WORK. ALSO, THERE WERE SOME --
2 I RECALL CIARA SHARING THE FACT THAT SHE FELT THAT SHE WAS
3 BEING SINGLED OUT FOR SCRUTINY AND FOR DISCIPLINE, THAT SHE
4 WAS BEING CALLED ON THE CARPET FOR THINGS THAT HER COWORKERS
5 WEREN'T.

6 Q. DO YOU RECALL ANYTHING ELSE THAT WAS DISCUSSED?

7 A. YES. SHE -- SHE STARTED SHARING SOME EXPERIENCES THAT SHE
8 HAD HAD BEGINNING AT HER INITIAL TRAINING. AND, QUITE
9 HONESTLY, MY JAW DROPPED. I COULD NOT BELIEVE THAT SHE HAD
10 GONE THROUGH A LOT OF THESE THINGS THAT SHE WAS DESCRIBING.

11 MR. LAFAYETTE: OBJECTION. OUTSIDE THE SCOPE OF THE
12 QUESTION.

13 THE COURT: OVERRULED.

14 BY MS. NUGENT:

15 Q. WHAT EXPERIENCES DID SHE SHARE THAT MADE YOUR JAW DROP?

16 A. I THINK THE FIRST THING THAT I RECALL WAS WHEN SHE WAS
17 TALKING RIGHT AFTER THEIR PROP TEST. THAT IS AN EXERCISE THAT
18 THEY HAVE TO PASS SUCCESSFULLY WHERE NEW EMPLOYEES HAVE TO
19 OPERATE A SMALL UNIT WITH WATER IN IT AND NOT OVERFILL A TANK.

20 Q. WHAT HAPPENED DURING THAT TEST THAT SHE SHARED?

21 A. AT THE END OF THAT, THEY TYPICALLY ANNOUNCE ALL OF THE
22 ASSIGNMENTS, WHICH DEPARTMENTS THE EMPLOYEES ARE GOING TO BE
23 ASSIGNED TO. AND SHE DESCRIBED JEFF FISCHER, WHO WAS THE
24 MENTOR WHO WAS GOING TO BE CONDUCTING THE TRAINING FOR THAT
25 DEPARTMENT, LOUD ENOUGH FOR ALL OF THE APPLICANTS TO HEAR,

1 MAKE A STATEMENT TO THE EFFECT OF MOTHER F-ER, WHO THE HELL
2 DID I PISS OFF TO GET THESE -- OR THIS GROUP.

3 SOMETHING ABOUT MORE THAN LIKELY, THEY ARE NOT ALL GOING
4 TO MAKE IT.

5 **Q.** DO YOU RECALL HER SHARING ANYTHING ELSE ABOUT WHAT
6 MR. FISCHER SAID TO HER?

7 **A.** YEAH. I RECALL SOMETHING ABOUT A STATEMENT ABOUT HER
8 MOVING TO A TEAM AND SOMETHING ALONG THE LINES OF NO, I DON'T
9 THINK THAT WOULD BE A GOOD FIT. WE ALREADY HAVE A FEMALE ON
10 THAT TEAM. HE WAS REFERRING TO A MALE EMPLOYEE WHOSE SEXUAL
11 ORIENTATION IS NOT HETEROSEXUAL.

12 **Q.** IS THAT SOMETHING -- IS THAT -- OKAY. WITHDRAWN.

13 CAN YOU RECALL ANYTHING ELSE THAT SHE SAID SPECIFICALLY
14 ABOUT THE BEGINNING OF HER EMPLOYMENT WITH MR. FISCHER?

15 **A.** JUST AN OVERALL SENSE THAT THERE WERE A COUPLE OF PEOPLE
16 IN HER GROUP OF TRAINEES WHO WERE NOT LIKED. I RECALL
17 SOMETHING BEING SAID BY MR. FISCHER ABOUT WHO WOULD HIRE A
18 PERSON LIKE CIARA NEWTON DURING THEIR TRAINING PROCESS.
19 MR. FISCHER, WHEN THEY WOULD GIVE AN ANSWER, WOULD SNAP A
20 PIECE OF PAPER, PUT HIS FACE INTO FRONT OF HIS HANDS IN FRONT
21 OF HER COWORKERS, IN AN ATTEMPT TO HUMILIATE OR MAKE THEM FEEL
22 LIKE THERE WAS NO HOPE FOR THEM.

23 **Q.** DID YOU OBSERVE ANY REACTION TO ANY OF THE STATEMENTS THAT
24 YOU'VE DESCRIBED MS. NEWTON MAKING ON THE PART OF MS. LAYNE?
25 DID YOU OBSERVE MS. LAYNE'S REACTION?

1 **A.** I RECALL HER SAYING SOMETHING ABOUT, YOU KNOW, THESE ARE
2 SOME PRETTY STRONG STATEMENTS YOU'RE MAKING HERE AND I FELT
3 LIKE WE SHOULD TAKE A BREAK. SO I ASKED IF WE COULD PAUSE SO
4 THAT CIARA AND I COULD GO TALK OUT IN THE HALLWAY.

5 **Q.** DID YOU AND CIARA GO TALK OUT IN THE HALLWAY?

6 **A.** WE DID. I TOLD HER THAT WHAT SHE WAS DESCRIBING IS
7 SERIOUS HARASSMENT AND I FELT LIKE SHE SHOULD USE SHELL'S
8 HARASSMENT PROCESS TO MAKE A FORMAL COMPLAINT. THAT I FELT
9 LIKE THAT WOULD PROTECT HER ON ALL OF THESE OTHER ISSUES THAT
10 I DIDN'T THINK THEY WERE THAT SERIOUS, THEY WERE PILING ON HER
11 AT THAT MEETING.

12 **Q.** WE WILL TALK ABOUT THOSE ISSUES THAT YOU WILL FELT WERE
13 PILING ON IN A MOMENT.

14 **A.** OKAY.

15 **Q.** BUT I WANT TO STICK WITH THE TIME THAT YOU TALKED WITH
16 CIARA IN THE BREAK AND IN THE MEETING?

17 **A.** OKAY.

18 **Q.** AFTER YOU TOLD HER WHAT YOU JUST DESCRIBED, DID SHE
19 RESPOND TO YOU?

20 **A.** SHE DID.

21 **Q.** WHAT DID SHE SAY?

22 **A.** OKAY. SHE WAS CONCERNED THAT -- THAT THE PEOPLE THAT
23 WITNESSED THIS, SHE WAS GOING TO HAVE TO NAME THEM AND SHE
24 DIDN'T FEEL COMFORTABLE DRAGGING THEM INTO IT UNLESS SHE COULD
25 TALK TO THEM FIRST. AND I SAID OKAY. WELL, HOW ABOUT -- I'LL

1 TELL YOU WHAT. WE'LL GO BACK AND TELL THEM THAT YOU WOULD
2 LIKE AN OPPORTUNITY TO DISCUSS WHAT WAS WITNESSED WITH THE
3 PEOPLE WHO WERE THERE BEFORE MAKING A NORMAL COMPLAINT AND
4 MAYBE TAKE YOUR LONG CHANGE AND MAYBE ANOTHER SET AND WE CAN
5 GET THAT GOING. AND SHE AGREED.

6 Q. WHEN YOU WENT BACK TO THE MEETING, WHAT HAPPENED?

7 A. THAT'S WHAT I JUST DESCRIBED I RECALL IS WHAT I SAID TO
8 MS. LAYNE AND THE OTHER PEOPLE AT THE TABLE WAS THAT CIARA
9 WOULD FEEL MORE COMFORTABLE HAVING AN OPPORTUNITY TO TALK WITH
10 HER COWORKERS BEFORE NAMING NAMES AND DRAGGING THEM INTO THIS.
11 BUT SHE DOES FEEL THAT SERIOUSLY ABOUT WHAT SHE'S GONE
12 THROUGH, AND I ENCOURAGED HER TO USE SHELL'S HARASSMENT
13 PROCESS TO FILE A FORMAL COMPLAINT.

14 Q. DID MS. LAYNE SAY ANYTHING ALONG THE LINES OF, WELL, WE
15 KNOW WHO IS IN HER --

16 MR. LAFAYETTE: OBJECTION, LEADING.

17 BY MS. NUGENT:

18 Q. DID MS. LAYNE SAY ANYTHING ALONG THE LINES OF WE KNOW WHO
19 WAS IN HER NEW HIRE CLASS AND WE CAN TALK TO THEM OURSELVES?
20 ANYTHING LIKE THAT?

21 THE COURT: I DIDN'T HEAR -- YOU LOOKED AT ME. WAS
22 THERE AN OBJECTION?

23 MR. LAFAYETTE: YES, YOUR HONOR. I MADE AN OBJECTION
24 OF LEADING.

25 THE COURT: SUSTAINED.

1 **BY MS. NUGENT:**

2 **Q.** YOU MENTIONED TWO OTHER TOPICS THAT WERE DISCUSSED IN
3 THE -- IN THE MEETING. YOU SAID ONE THING ABOUT BEING LATE.
4 SO WAS THE TOPIC OF ATTENDANCE SOMETHING THAT WAS DISCUSSED?

5 **A.** YEAH. I RECALL ONE OF THE ITEMS THAT WERE DISCUSSED AT
6 THAT MEETING WAS THERE WAS AN ISSUE WITH CIARA HAD WORKED OUT
7 THE TIME SHE WAS GOING TO RELIEVE ONE OF HER COWORKERS.

8 **Q.** WHAT DO YOU RECALL ABOUT THAT?

9 **A.** BASICALLY, THAT THE PERSON THAT SHE HAD REACHED AN
10 AGREEMENT WITH WHO WAS GOING TO STAY A LITTLE BIT LONGER
11 BEFORE SHE CAME IN TO RELIEVE HIM WAS TOLD TO GO HOME, THEY
12 HAD AN EXTRA WORKING AND HE DIDN'T NEED TO STAY.

13 **Q.** HAVE YOU OBSERVED OPERATORS AT THE REFINERY DOING THAT
14 TYPE OF THING, MAKING THAT TYPE OF ARRANGEMENT WITH THE
15 OPERATOR THEY ARE COMING TO RELIEVE?

16 **MR. LAFAYETTE:** OBJECTION, LACK OF FOUNDATION IN
17 OPCEN.

18 **THE COURT:** OVERRULED.

19 **BY MS. NUGENT:**

20 **Q.** YOU CAN ANSWER THE QUESTION BUT I WILL RESTATE IT JUST SO
21 YOU HAVE IT IN MIND.

22 HAVE YOU OBSERVED OPERATORS AT THE REFINERY MAKING THOSE
23 TYPES OF ARRANGEMENTS AND ASKING AN OPERATOR BEFORE THEM WHO
24 THEY ARE GOING TO RELIEVE TO STAY AFTER?

25 **A.** IT IS A COMMON PRACTICE. YEAH, IT HAPPENS EVERY DAY. AND

1 SHELL ALSO HAS A MARTINEZ POLICY AND IT IS IN OUR CONTRACT
2 THAT ALLOWS OPERATORS TO EXCHANGE WHOLE SHIFTS. THEY HAVE TO
3 FILL OUT SOME PAPERWORK, BUT YEAH, IT IS NOT UNCOMMON.

4 Q. AND IN THE MEETING DID YOU SAY ANYTHING ALONG THOSE LINES?

5 A. I DID. I STATED THAT IN MY EXPERIENCE HAD HAPPENED
6 FREQUENTLY IN MY OLD DEPARTMENT, AND I THINK I EXPRESSED SHOCK
7 THAT IT WAS SUCH A BIG DEAL IN OPCEN.

8 Q. OKAY. SO NOW LET'S TURN TO THE THIRD TOPIC THAT YOU SAID
9 WAS DISCUSSED AND I FORGET EXACTLY THE WORDS YOU USED. BUT
10 YOU SAID SOMETHING LIKE --

11 MR. LAFAYETTE: OBJECTION, LEADING.

12 THE COURT: I DON'T HAVE A QUESTION.

13 BY MS. NUGENT:

14 Q. YOU TALKED ABOUT SOME LESS SERIOUS THINGS OR SOMETHING
15 LIKE THAT. SO I WANT TO TURN TO THAT LAST TOPIC THAT WAS
16 DISCUSSED.

17 DO YOU KNOW WHAT A PD LOG IS?

18 A. YEAH. THAT ACRONYM IS SUPPOSED TO STAND FOR POSITIVE
19 DISCIPLINE.

20 Q. WHEN YOU SAY SUPPOSED TO STAND FOR, WHAT DO YOU MEAN?

21 A. WELL, IT HAS TYPICALLY TURNED INTO A CLUB BY MANAGEMENT TO
22 BEAT MY COWORKERS OVER THE HEAD WITH. IT IS SUPPOSED TO NOT
23 ONLY HAVE COACHING FOR NEGATIVE EVENTS BUT IT IS SUPPOSED TO
24 BE A REFLECTION OF THE POSITIVE THINGS THAT AN EMPLOYEE DOES
25 IN THE COURSE OF THEIR JOB.

1 Q. LET'S TALK ABOUT MS. NEWTON'S PD LOG, SPECIFICALLY.
2 DURING THE MEETING WERE ENTRIES THAT WERE MADE INTO IT
3 DISCUSSED?

4 A. I THINK QUITE A FEW WERE IN THE PD LOG THAT I EVENTUALLY
5 WAS ABLE TO LOOK AT DURING HER TERMINATION.

6 Q. OKAY. SO LET'S TALK ABOUT SOME OF THOSE ENTRIES.

7 A. OKAY.

8 Q. THE JURY HAS HEARD QUITE A BIT ABOUT SOMETHING CALLED A
9 DRAEGER TUBE AND SO I WOULD LIKE YOU TO EXPLAIN WHAT THAT IS A
10 D GIVE US A DRAWING. MS. STONE, CAN WE HAVE THE SCREEN THAT
11 CAN BE WRITTEN ON?

12 THE CLERK: HE CAN WRITE. THERE HAS TO BE A DOCUMENT
13 UP THERE. HE CAN'T DRAW ON THE SCREEN.

14 MS. NUGENT: OKAY. MAY I HAVE PERMISSION TO HAVE
15 MR. JONES COME DOWN AND DO A DRAWING ON THE ELMO?

16 THE COURT: SURE.

17 MS. NUGENT: YOU CAN COME ON DOWN.

18 (WITNESS STEPS DOWN FROM WITNESS STAND.)

19 THE COURT: IF YOU ARE GOING TO ASK FOR IT TO BE
20 ADMITTED, I NEED A CLEAN SHEET OF PAPER.

21 MS. NUGENT: I BROUGHT ONE FOR THIS VERY MOMENT.

22 THE COURT: OKAY.

23 DO YOU NEED A MARKER?

24 MS. NUGENT: I HAVE A MARKER.

25

1 **BY MS. NUGENT:**

2 **Q.** MR. JONES, WILL YOU DRAW A DRAEGER TUBE AND AS YOU DO IT,
3 WILL YOU EXPLAIN WHAT YOU ARE DRAWING?

4 **A.** OKAY. A DRAEGER TUBE THAT'S A WAY OF SAMPLING GAS STREAMS
5 FOR DIFFERENT TYPES OF CHEMICALS. AND IT'S A GLASS TUBE AND
6 I'M GOING TO DRAW IT NOW.

7 IT'S SMALLER THAN A PENCIL. USUALLY ABOUT 4 INCHES LONG.
8 THAT COMES TO A SMALL POINT AND THERE IS TYPICALLY A LITTLE
9 BULB ON THE END. THERE IS A TYPE OF REAGENT IN THE MIDDLE OF
10 THE TUBE AND GRADATIONS OR LINES.

11 THE TUBE ITSELF, THERE'S NO EASY WAY TO GET THE GAS TO
12 FLOW THROUGH THAT TUBE, SO THERE IS A HAND PUMP. AND IT MAKES
13 ME THINK OF A FIREPLACE BELLOWS, BUT IT WILL FIT IN YOUR HAND
14 AND IT WORKS THE OPPOSITE. IT IS NOT BLOWING AIR. IT IS
15 ACTUALLY SUCKING AIR THROUGH THE TUBE. THERE IS A WILL YOU BE
16 RUBBER RECEPTACLE.

17 GENERALLY, WHAT HAPPENS IS -- THE TUBES BOTH ENDS WILL GET
18 BROKEN, THE TUBE WILL BE INSERTED HERE (INDICATING) AND
19 ACCORDING TO WHATEVER CHEMICAL YOU ARE TRYING TO GET A TEST
20 RESULT OF, YOU'LL PUMP THE HAND PUMP A PRESCRIBED NUMBER OF
21 PUMPS AND, BY DOING THAT, THAT SUCKS AIR THROUGH THE TUBE AND
22 IT MAKES THE REAGENT IN THE MIDDLE OF THE TUBE CHANGE COLOR TO
23 A CERTAIN POINT ALONG THESE GRADATIONS WHICH ALLOWS YOU TO
24 SAY, OKAY, THERE'S X-PERCENT OF H₂S IN THIS STRING.

25 **Q.** OKAY.

1 **A.** LIKE I SAID, THIS IS ABOUT 4 INCHES LONG AND THIS PUMP
2 WILL FIT INTO YOUR HAND.

3 **THE COURT:** ALL RIGHT. SEE IF WE CAN CLEAN OUR ELMO.
4 OKAY. WE WILL MARK THAT NEXT IN ORDER.

5 (PLAINTIFF'S EXHIBIT 207 MARKED FOR IDENTIFICATION)

6 **BY MS. NUGENT:**

7 **Q.** OKAY. SO THE GLASS PIECE HERE?

8 **A.** YES.

9 **Q.** IS IT PUT INTO THE PUMP AS YOU DESCRIBED IN SOME WAY, AND
10 YOU CAN -- SO WHERE IS IT PUT INTO THE PUMP HERE (INDICATING)?

11 **A.** EXACTLY WHERE YOU ARE POINTING. THERE IS A RUBBER
12 RECEPTACLE THAT, ONCE YOU BROKE BOTH ENDS OF THE TUBE OFF, YOU
13 INSERT IT INTO THERE BEFORE YOU BEGIN THE PUMPING ACTION TO
14 DRAW THE MATERIAL INTO THE TUBE.

15 AND WHAT I DIDN'T DRAW UP THERE, THERE IS TYPICALLY A BOX
16 OR SOME KIND OF RECEPTACLE, THAT ONCE YOU ASSEMBLE THE HAND
17 PUMP AND THE TUBE, YOU INSERT THAT INTO THERE AND SEND A
18 STREAM OF PROCESSED GAS INTO THAT BOX BEFORE YOU START
19 PUMPING. THAT IS HOW YOU COME UP WITH YOUR TEST RESULT.

20 **Q.** AND BEFORE YOU CAN USE THE TUBE, THIS END AND THIS END
21 (INDICATING) HAVE TO BE BROKEN OFF, RIGHT?

22 **A.** ABSOLUTELY. YOU WON'T BE ABLE TO DRAW GAS OVER THE
23 REAGENT, OVER THE MIDDLE OF THE TUBE UNLESS BOTH ENDS HAVE
24 BEEN BROKEN.

25 **Q.** OKAY. THANK YOU. I DON'T KNOW IF THAT CLARIFIED IT. IT

1 DID FOR ME.

2 OKAY. SO THERE WAS SOMETHING THAT WAS TALKED ABOUT
3 CONCERNING A DRAEGER TUBE IN THE AUGUST 2ND MEETING. WHAT DO
4 YOU REMEMBER BEING DISCUSSED?

5 **A.** I REMEMBER THERE WAS SOME CONCERN ON CIARA'S PART THAT
6 WHEN SHE HAD GONE OUT THERE TO DRAW THE SAMPLE AS SHE HAD IN
7 THE PAST THAT THE TUBES WEREN'T WHERE THEY NORMALLY WERE. AND
8 FROM MY EXPERIENCE WHEN I WOULD GO OUT TO THAT -- THAT TYPE OF
9 SAMPLE, WE WOULD HAVE AN AREA WITH ONE OR TWO CONTAINERS OF
10 TUBES READILY AVAILABLE SO YOU COULD TAKE ONE.

11 BUT, YEAH, SHE DESCRIBED WHEN SHE WENT OUT FOR THE TIME
12 THAT WAS ENTERED IN HER PD LOG, THE AREA LOOKED DIFFERENT AND
13 SHE COULD NOT LOCATE A BRAND NEW PRISTINE TUBE IN A BOX.

14 **Q.** AND SO WHAT DID SHE DO --

15 **A.** I RECALL.

16 **Q.** -- AS SHE EXPLAINED IT.

17 **A.** I REMEMBER HER DESCRIBING SHE SAW ONE ON THE GROUND OR ON
18 SOME OF THE EQUIPMENT NEARBY THAT ONLY HAD ONE OF THE TIPS
19 BROKEN OFF. AND I BELIEVE SHE ALSO STATED THAT IT HAD NOT
20 CHANGED COLOR, SO IT WAS THE SAME AS CLEAN TUBE.

21 **Q.** YOU HAVE A WITNESS BINDER IN FRONT OF YOU AND IT HAS SOME
22 DOCUMENTS IN IT.

23 I WOULD LIKE YOU TO TAKE A LOOK AT NO. 99.

24 **A.** ALL RIGHT. I'M GOING TO HAVE TO GET MY READING GLASSES.

25 ALL RIGHT. SAMPLING AND TESTING, EXHIBIT 99.

1 Q. DO YOU RECOGNIZE THIS DOCUMENT?

2 A. I DON'T RECALL SEEING THIS VERSION OF IT. IT PROBABLY
3 LOOKED DIFFERENT WHEN I WAS AN OPERATOR.

4 Q. OKAY.

5 A. YOU KNOW WHAT? I SEE HERE NOW IT'S SPECIFIC PROCEDURE FOR
6 OPCEN HYDROGEN PLANT NO. 2. SO I WAS NEVER QUALIFIED AS AN
7 OPERATOR IN THAT PLANT, SO I WAS NEVER CALLED UPON TO USE THIS
8 PROCEDURE. IT LOOKS SIMILAR TO PAGE 1 OF 6. YEAH. IT LOOKS
9 SIMILAR TO OTHER TYPES OF PROCEDURES THAT SHELL USES IN OTHER
10 DEPARTMENTS.

11 Q. DO YOU HAVE ANY REASON TO BELIEVE THAT THIS IS NOT A TRUE
12 AND CORRECT COPY OF THE SAMPLING AND TESTING POLICY SHELL USES
13 IN HP-2?

14 MR. LAFAYETTE: OBJECTION. THAT CALLS FOR
15 SPECULATION AND LACKING IN FOUNDATION.

16 THE COURT: IT IS IN EVIDENCE BUT HE -- THE OBJECTION
17 IS SUSTAINED.

18 MS. NUGENT: OKAY.

19 BY MS. NUGENT:

20 Q. DO YOU KNOW HOW MANY TIMES A DRAEGER TUBE CAN BE REUSED IF
21 THERE IS A NEGATIVE READING?

22 A. WHEN YOU SAY NEGATIVE READING, WHAT DO YOU MEAN BY THAT?

23 Q. WHAT DOES A NEGATIVE READING MEAN? IS THERE GAS PRESENT
24 OR NOT?

25 A. OH, OKAY. YEAH. IN SOME INSTANCES TUBES -- YEAH, CAN BE

1 USED MULTIPLE TIMES. OR TUBES THAT HAVE ONE END BROKEN OFF,
2 IF YOU BREAK OFF THE OTHER END OF THAT TUBE, IT'S THE SAME AS
3 ONE THAT YOU'VE JUST TAKEN OUT OF THE BOX.

4 **Q.** OKAY. LET'S TALK ABOUT SOME OF THE OTHER ENTRIES THAT
5 WERE DISCUSSED. WHAT ELSE DO YOU REMEMBER DISCUSSING IN TERMS
6 OF MS. NEWTON'S PD LOG IN THAT MEETING?

7 **A.** I BELIEVE IT CAME UP SOME KIND OF INCIDENT WITH SULFURIC
8 ACID AND ALSO THERE WAS AN EVENT WITH A BAKER TANK AND
9 POTASSIUM PERMANGANATE.

10 **Q.** ALL RIGHT. LET'S START WITH THE POTASSIUM PERMANGANATE.
11 WHAT DO YOU RECALL ABOUT THAT?

12 **A.** THAT THERE WAS SOME KIND OF ISSUE WITH THE VALVE THAT
13 CIARA HAD STARTED TO OPEN OR HAD OPENED AND HAD CLOSED AND
14 THAT MAKE ITS WAY INTO HER PD LOG.

15 **Q.** DID YOU HAVE ANY OPINION ABOUT THAT MAKING ITS WAY INTO
16 HER PD LOG?

17 **MR. LAFAYETTE:** OBJECTION, INAPPROPRIATE --

18 **THE COURT:** OVERRULED.

19 **THE WITNESS:** YEAH. AT THE TIME I PRETTY MUCH HAD TO
20 STOP MY EYES FROM ROLLING BACK. I MEAN, HOW MANY OPERATORS
21 HAVE NOT OPENED THE WRONG VALVE. IF IT IS A VALVE THAT COULD
22 HAVE CATASTROPHIC EFFECTS IF IT IS OPENED AT THE WRONG TIME OR
23 IN THE WRONG PLACE, THEN THERE SHOULD BE SOME KIND OF
24 MECHANICAL MEANS TO PREVENT THAT, AND THE MATERIAL IN THE TANK
25 THE WAY IT WAS DESCRIBED AT THAT MEETING, IT'S A DILUTE

1 MIXTURE OF POTASSIUM PERMANGANATE, ABOUT 4 PERCENT AND
2 96 PERCENT WATER THAT IS TYPICALLY USED TO CLEAN OUT PIPING
3 SYSTEMS TO REMOVE ODORS AND H2S SULFUR COMPOUNDS.

4 **BY MS. NUGENT:**

5 **Q.** THEN YOU UNDERSTOOD THAT WAS THAT MIXTURE, 96 PERCENT
6 WATER AND 4 PERCENT POTASSIUM PERMANGANATE, THAT WAS -- THAT
7 CAME OUT WHEN THE VALVE WAS OPENED?

8 **A.** YES, THAT'S THE WAY I UNDERSTOOD IT.

9 **Q.** ALL RIGHT. YOU ALSO MENTIONED SOMETHING ABOUT SULFURIC
10 ACID? WHAT DO YOU RECALL ABOUT THAT INCIDENT?

11 **A.** YEAH. THERE WAS DISCUSSION OF AN INCIDENT WHERE CIARA WAS
12 CONCERNED ABOUT -- THERE WAS SOME SULFURIC ACID IN A CERTAIN
13 AREA THAT HAD BEEN SPILLED AND SHE FELT IT WAS UNSAFE AND THAT
14 IT NEEDED TO BE CLEANED UP. SHE EXPRESSED CONCERN FOR HERSELF
15 AND HER COWORKERS.

16 **Q.** AND LET ME ASK YOU: ARE YOU FAMILIAR WITH THE TERM "ZERO
17 TO SIXTY"?

18 **A.** YES, I AM.

19 **Q.** WHAT IS YOUR UNDERSTANDING OF ZERO TO SIXTY IN THE CONTEXT
20 OF THE SHELL REFINERY IN MARTINEZ?

21 **A.** THAT'S A PRACTICE AT SHELL MARTINEZ WHERE WE USED OUR
22 REPORTING SYSTEM. IT'S CALLED FOUNTAIN INCIDENT MANAGEMENT.
23 AND YOU WRITE A REPORT ON AN INCIDENT.

24 AND THE ZERO TO SIXTY PART OF THAT IS YOU CUT AND PASTE
25 THAT REPORT INTO -- IT'S JUST A BLANK EMAIL. AND YOU SEND

1 THAT OUT AS A DESCRIPTION OF THE INCIDENT TO A PRESCRIBED LIST
2 OF RECIPIENTS ON THE EMAIL LIST ON THAT TEMPLATE WHEN YOU
3 PASTE THE REPORT INTO IT. AND THE INTENT IS TO COMMUNICATE
4 INCIDENTS AND SHARE LEARNINGS WITHIN OF SIXTY MINUTES OF AN
5 EVENT.

6 **Q.** FOR WHAT PURPOSE?

7 **A.** TO PREVENT REPEAT INCIDENTS OR TO ALERT OTHER UNITS THAT
8 MAY HAVE A SIMILAR ISSUE IN THEIR UNITS AND TO, LIKE I SAID,
9 REPEAT INCIDENTS OR EVENTS.

10 **Q.** DID YOU HAVE ANY UNDERSTANDING OF WHETHER THERE WAS A ZERO
11 TO SIXTY REPORT PREPARED FOR THE POTASSIUM PERMANGANATE
12 INCIDENT?

13 **MR. LAFAYETTE:** OBJECTION, LACKING IN FOUNDATION.

14 **THE COURT:** OVERRULED -- WELL, ACTUALLY SET SOME
15 FOUNDATION.

16 **BY MS. NUGENT:**

17 **Q.** WHEN YOU WERE IN THE MEETING ON AUGUST 2ND, YOU ALREADY
18 TOLD US THAT YOU DISCUSSED THIS BAKER VALVE INCIDENT WHERE
19 THIS MIXTURE WATER AND 4 PERCENT POTASSIUM PERMANGANATE CAME
20 OUT, RIGHT?

21 **A.** I RECALL THAT BEING BROUGHT UP DURING THE MEETING, YES.

22 **Q.** DO YOU HAVE ANY UNDERSTANDING OF WHETHER A ZERO TO SIXTY
23 REPORT WAS CREATED AS A RESPONSE TO THAT?

24 **MR. LAFAYETTE:** OBJECTION, LACKING IN FOUNDATION.

25 **THE COURT:** OVERRULED.

1 DO YOU HAVE AN UNDERSTANDING FROM THAT MEETING?

2 **THE WITNESS:** I'M KIND OF DRAWING A BLANK IN REGARDS
3 TO THAT. I THINK THE THING THAT STANDS OUT THE MOST TO ME WAS
4 THE FACT THAT ONE DID NOT GET SUBMITTED ON THE SULFURIC ACID
5 INCIDENT.

6 **BY MS. NUGENT:**

7 **Q.** WHY DOES THAT STAND OUT TO YOU?

8 **A.** WELL, I MEAN, THE AMOUNT OF RISK AND THE POTENTIAL FOR
9 INJURY ON 99 PERCENT SULFURIC ACID IS SO MUCH BE HIGHER THAN A
10 DILUTE WATER AND POTASSIUM PERMANGANATE INCIDENT THAT IT SEEMS
11 LIKE YOU WOULD DEFINITELY WANT EVERYONE TO BE AWARE OF A SPILL
12 IN A CERTAIN AREA THAT HAD SULFURIC ACID INVOLVED.

13 **Q.** LET'S TAKE A LOOK CLOSER AT SULFURIC ACID. ALSO IN YOUR
14 WITNESS BINDER, THERE IS AN EXHIBIT 116.

15 WILL YOU TAKE A LOOK AT THAT?

16 **A.** OKAY. ALL RIGHT.

17 **Q.** ALL RIGHT. ARE YOU AT 116?

18 **A.** I AM.

19 **Q.** WHAT IS THAT?

20 **A.** IT LOOKS LIKE SDS, SAFETY DATA SHEET, FOR SULFURIC ACID AT
21 A 99 PERCENT CONCENTRATION.

22 **Q.** HAVE YOU SEEN THIS DOCUMENT BEFORE?

23 **A.** I HAVE SEEN -- I DON'T KNOW IF I HAVE SEEN THIS EXACT
24 DOCUMENT. EACH MANUFACTURER HAS ONE BUT I'VE SEEN SIMILAR
25 ONES.

1 Q. IF YOU LOOK DOWN AT THE BOTTOM OF THE PAGE, THIS IS UNDER
2 SECTION TWO, HAZARDS IDENTIFICATION?

3 A. OKAY.

4 Q. THERE IS A PORTION OF THE DOCUMENT THAT SAYS
5 CLASSIFICATION OF THE SUBSTANCE OR MIXTURE.

6 DO YOU SEE THAT?

7 A. YEAH, I'M LOOKING AT IT.

8 Q. THERE IS SOME INFORMATION BELOW THAT.

9 DO YOU RECOGNIZE THAT -- BASED ON YOUR EXPERIENCE THAT
10 YOU'VE ALREADY DESCRIBED, DO YOU RECOGNIZE WHAT IS IN THAT
11 SECTION AS THE HARMS THAT CAN COME FROM SULFURIC ACID
12 99 PERCENT?

13 A. ABSOLUTELY. THAT LOOKS VERY FAMILIAR AND WOULD CAUSE
14 GREAT CONCERN ON THE PART OF ANY PERSON WORKING AROUND THAT
15 MATERIAL.

16 MS. NUGENT: YOUR HONOR, I MOVE EXHIBIT 116 INTO
17 EVIDENCE.

18 THE COURT: ANY OBJECTION?

19 MR. LAFAYETTE: YES. NO FOUNDATION WITH THIS
20 WITNESS.

21 THE COURT: AGREED.

22 MS. NUGENT: LET'S KEEP TAKING A LOOK AT THE SULFURIC
23 ACID.

24 BY MS. NUGENT:

25 Q. LET'S -- IF YOU LOOK ON THE PAGE 2?

1 **A.** OKAY.

2 **Q.** THERE ARE SOME PRECAUTIONARY STATEMENTS, PREVENTION,
3 RESPONSE, STORAGE, DISPOSAL AND INSTRUCTIONS FOR THAT. DO YOU
4 RECOGNIZE THOSE?

5 **A.** I DO.

6 **Q.** OR THOSE CONSISTENT WITH WHAT YOU HAVE LEARNED IN YOUR
7 TRAINING?

8 **MR. LAFAYETTE:** LEADING.

9 **THE COURT:** OVERRULED.

10 **BY MS. NUGENT:**

11 **Q.** ARE THOSE AREAS AND WHAT IT SAYS ABOUT SULFURIC ACID
12 CONSISTENT WITH WHAT YOU HAVE LEARNED IN YOUR TRAINING SINCE
13 YOU'VE BEEN AT THE REFINERY --

14 **A.** YES, THEY ARE.

15 **Q.** -- IN MARTINEZ?

16 ONE OTHER THING ON THAT PAGE. OTHER HAZARDS WHICH DO NOT
17 RESULT IN RECLASSIFICATION. DO YOU SEE THAT PORTION OF THE
18 DOCUMENT?

19 **A.** YES, IT SAYS --

20 **Q.** DON'T READ IT.

21 **A.** OKAY.

22 **Q.** IS THAT INFORMATION CONSISTENT WITH WHAT YOU HAVE LEARNED
23 IN YOUR TRAINING AT SHELL FOR SULFURIC ACID 99 PERCENT?

24 **A.** IT IS.

25 **Q.** AND IF YOU FLIP THROUGH QUICKLY JUST THE REST OF THE

1 DOCUMENT, I HAVE THE SAME QUESTION FOR THE OTHER INFORMATION
2 ON IT BASED --

3 **THE COURT:** I DON'T KNOW HOW HE IS GOING TO DO THAT
4 QUICKLY. THIS IS A 19-PAGE DOCUMENT.

5 **MS. NUGENT:** OKAY. I WOULD LIKE TO MOVE IT INTO
6 EVIDENCE --

7 **THE COURT:** I'M NOT GOING TO MOVE THE ENTIRE DOCUMENT
8 INTO EVIDENCE. YOU WILL HAVE TO GO SECTION BY SECTION.

9 **MS. NUGENT:** OKAY. I WOULD LIKE TO MAKE THE FIRST
10 TWO PAGES 116A AND MOVE THAT INTO EVIDENCE?

11 **MR. LAFAYETTE:** OBJECTION, LACK OF FOUNDATION.

12 **THE COURT:** WE ARE -- HAVEN'T TALKED ABOUT SECTION
13 THREE ON PAGE 2.

14 **MS. NUGENT:** OKAY.

15 **BY MS. NUGENT:**

16 **Q.** MR. JONES, IF YOU WILL LOOK AT SECTION THREE ON THE SECOND
17 PAGE OF THE DOCUMENT.

18 **A.** OKAY.

19 **Q.** IT SAYS COMPOSITION/INFORMATION ON INGREDIENTS? DO YOU
20 SEE THAT?

21 **A.** I DO.

22 **Q.** IF YOU LOOK AT THE INFORMATION THERE, IS THAT INFORMATION
23 CONSISTENT WITH WHAT YOU KNOW ABOUT SULFURIC ACID BASED ON
24 YOUR TRAINING AND EXPERIENCE AT THE REFINERY IN MARTINEZ?

25 **A.** IT IS.

1 **THE COURT:** HOW CAN THAT BE? YOU KNOW IDENTIFICATION
2 NUMBERS? THERE ARE IDENTIFICATION NUMBERS ON THIS. HOW DO
3 YOU KNOW THAT?

4 **THE WITNESS:** ALTHOUGH THE NUMBERS ARE UNIQUE, THEY
5 ARE ONLY UNIQUE TO THE MANUFACTURER OF THAT CHEMICAL. THE
6 COMPOUNDS THEMSELVES ARE VERY COMMON MATERIALS THAT ARE USED
7 IN MOST MANUFACTURING COMPLEXES.

8 THESE DATA SHEETS ARE UNIQUE TO THE MANUFACTURER. THE
9 MATERIAL CONTAINED IN THEM IS NOT AS UNIQUE AS THE NUMBERS AND
10 OTHER THE --

11 **THE COURT:** SO WHAT ARE YOU FAMILIAR WITH IN THAT
12 SECTION THREE ON PAGE 2?

13 **THE WITNESS:** SECTION THREE, PAGE 2?

14 **THE COURT:** WHAT LOOKS FAMILIAR TO YOU?

15 **THE WITNESS:** THE 99 PERCENT SULFURIC ACID, IT BEING
16 CLASSIFIED AS A MIXTURE.

17 **THE COURT:** OKAY.

18 **THE WITNESS:** AND JUST THE GENERAL WAY THAT IT'S
19 PRESENTED ON A SAFETY DATA SHEET.

20 **THE COURT:** ALL RIGHT. THE OBJECTION IS NOTED. I
21 WILL ADMIT PAGES 1 AND 2. WE WILL DESIGNATE THAT AS 116A.

22 (PLAINTIFF'S EXHIBIT 116A RECEIVED IN EVIDENCE)

23 **BY MS. NUGENT:**

24 **Q.** DO YOU RECALL ANY OF THE OTHER ENTRIES ON MS. NEWTON'S PD
25 LOG THAT WERE DISCUSSED AT THAT AUGUST 2ND MEETING? WE'VE

1 TALKED ABOUT THE BAKER TANK AND WE TALKED ABOUT A SULFURIC
2 ACID AND TALKED ABOUT THE DRAEGER TUBE.

3 DO YOU RECALL ANYTHING ELSE THAT WAS WITH DISCUSSED IN
4 TERMS OF AN ENTRY INTO HER LOG?

5 **A.** YES.

6 **Q.** WHAT ELSE DO YOU RECALL?

7 **A.** I RECALL MENTION OF A BUMPING A PUMP.

8 **Q.** WHAT DO YOU RECALL ABOUT THAT?

9 **A.** SOMETHING ABOUT EITHER IT HAD NOT BEEN BUMPED OR IT HAD
10 BEEN BUMPED AND THE BOARD OPERATOR HAD NOT WHEN CONTACTED.
11 SOMETHING ALONG THOSE LINES.

12 **Q.** DID YOU FORM ANY OPINION ABOUT THAT ENTRY IN HER LOG BASED
13 ON WHAT YOU HEARD AT THE MEETING?

14 **A.** IT WAS LIKE MOST OF THEM. IT WAS OTHER WHOLE LOT OF
15 NOTHING. IT IS VERY COMMON TO BUMP PUMPS OUT THERE.
16 TYPICALLY, IT IS NOT A CRITICAL ACTION. YOU TYPICALLY -- YOU
17 WANT TO INFORM YOUR BOARD OPERATOR IN CASE IT CAUSES THEM AN
18 ALARM SO THAT THEY ARE NOT OVERLY CONCERNED THAT SOMETHING BAD
19 IS HAPPENING IN YOUR UNIT. BUT IT IS COMMON TO BUMP PUMPS FOR
20 MANY DIFFERENT REASONS.

21 **Q.** DO YOU RECALL ANY -- ANYTHING THAT MS. LAYNE SAID OR ANY
22 OF THE OTHER PEOPLE WHO ARE IN THE MEETING TO -- TO MS. NEWTON
23 GENERALLY, GENERALLY ABOUT HER PERFORMANCE?

24 **A.** I CAN'T RECALL ONE QUANTIFYING STATEMENT BUT JUST AN
25 OVERALL SENSE EVERYTHING SHE DID WAS SOMETHING TO BE CONCERNED

1 ABOUT.

2 Q. BASED ON YOUR HISTORY AT SHELL SINCE 1995, SAFETY TRAINING
3 YOU TALKED ABOUT, YOUR OWN EXPERIENCE AS AN OPERATOR, WAS
4 THERE ANYTHING IN ANY OF THOSE ENTRIES THAT YOU SAW OR WAS
5 DISCUSSED THAT LED YOU TO HAVE ANY CONCERN ABOUT MS. NEWTON AS
6 AN OPERATOR WHEN IT CAME TO THE SAFETY OF OTHER OPERATORS
7 THERE?

8 MR. LAFAYETTE: OBJECTION, IMPROPER OPINION.

9 THE COURT: OVERRULED.

10 THE WITNESS: I THINK THE WAY THAT HER RESPONSE TO
11 THE SPILL SULFURIC ACID, I THINK THAT INDICATED A HIGH LEVEL,
12 ESPECIALLY FOR A NEW PEOPLE. MOST NEW EMPLOYEES DON'T WANT TO
13 PAINT A TARGET ON THEIR BACK. SO TO STAND UP AND PUSH FOR
14 SOME KIND OF RESPONSE FROM YOUR LINE LEADERSHIP, I THINK THAT
15 SHOWS A GREAT DEAL OF INITIATIVES AND BRAVERY FOR A NEW
16 EMPLOYEE AND I WAS IMPRESSED BY THAT. THAT IS ONE OF THE
17 THINGS THAT STOOD OUT.

18 BY MS. NUGENT:

19 Q. ANYTHING ELSE STAND OUT?

20 A. JUST THE WAY -- WHEN I LOOKED AT THE PD LOG, JUST THE WAY
21 IT WAS PUT TOGETHER, YOU'VE GOT ONE PAGE WITH FIVE MONTHS OF
22 COMMENTS AND THEN SUDDENLY -- I THINK IT STOPPED IN APRIL OR
23 MAY -- AND THEN SUDDENLY IN JULY, YOU START FOUR PAGES OF
24 EVENTS THAT COVER A THREE-DAY PERIOD.

25 Q. WHY DID THAT STAND OUT IN YOUR MIND?

1 **A.** WELL, TYPICALLY, IF A PERSON IS BEING CONSIDERED FOR
2 DISCIPLINE FOR PERFORMANCE, IT IS SOMETHING EVERY DAY. EVERY
3 TIME THAT PERSON GOES OUT THERE, THERE IS SOME KIND OF
4 INCIDENT OR SOME KIND OF BAD EFFECT. AND WHAT I SAW IN HER
5 FILE WAS JUST FOUR PAGES OVER A THREE-DAY PERIOD OF MINOR
6 THINGS THAT TO ME WERE LAUGHABLE.

7 **Q.** WERE YOU EVER A PARTICIPANT IN ANY OTHER MEETINGS
8 CONCERNING MS. NEWTON WHILE SHE WAS EMPLOYED AT THE REFINERY?

9 **A.** I BELIEVE IN BETWEEN THE -- THAT AUGUST MEETING AND HER
10 TERMINATION, I DIDN'T PARTICIPATE IN ANY OTHER DISCIPLINARY
11 TYPE MEETINGS.

12 **Q.** DID ANYBODY FROM THE COMPANY REACH OUT TO YOU FOR ANY
13 FOLLOW-UP INFORMATION FROM THE AUGUST 2ND MEETING?

14 **A.** NO ONE FROM THE COMPANY REACHED OUT TO ME. I AM THINKING
15 A COUPLE OF WEEKS AFTER THAT AUGUST MEETING, I SENT CIARA A
16 TEXT -- I'VE STILL GOT THOSE IN MY PHONE -- REMINDING HER THAT
17 SHE SHOULD GET IN TOUCH WITH OUR ADJUSTMENT COMMITTEE CHAIRMAN
18 AND GO FORWARD WITH THE HARASSMENT PAPERWORK THAT I FELT LIKE
19 IT WOULD PROTECT HER.

20 **Q.** YOU HAD CONCERNS THAT SHE WAS BEING HARASSED, RIGHT?

21 **MR. LAFAYETTE:** OBJECTION, IMPROPER OPINION AND
22 LEADING.

23 **THE COURT:** SUSTAINED AS TO THE FORM OF THE QUESTION.

24 **BY MS. NUGENT:**

25 **Q.** WERE YOU CONCERNED ABOUT MS. NEWTON'S EMPLOYMENT THERE?

1 **A.** I WAS. I FELT... IT MADE ME THINK OF MY OWN DAUGHTER AND
2 IF SHE WERE IN THE SAME SITUATION.

3 **Q.** LET'S TALK ABOUT THE TERMINATION MEETING --

4 **THE COURT:** IT LOOKS LIKE YOU ARE SWITCHING GEARS.

5 **MS. NUGENT:** YES.

6 **THE COURT:** SO WE WILL TAKE OUR SECOND BREAK, LADIES
7 AND GENTLEMEN. SO, AGAIN, AT THIS TIME THERE IS SOMETHING A
8 LITTLE MORE SAVORY FOR YOU IN THERE. I HAVE TO SAY, IF YOU
9 ARE VEGETARIAN, DON'T TOUCH THE OBVIOUS ONE. WE'LL SEE YOU IN
10 15 MINUTES. STAND IN RECESS.

11 (PROCEEDINGS HEAD OUTSIDE THE PRESENCE OF THE JURY.)

12 **THE COURT:** OKAY. THE RECORD WILL REFLECT THE JURY
13 HAS LEFT.

14 SO THAT I DON'T LEAVE YOU ALL IN THE DARK, I HOST A
15 GATHERING FOR ALL OF THE U.S. ATTORNEYS AND FEDERAL DEFENDERS
16 IN OAKLAND EVERY YEAR AND THESE GUYS ARE GETTING PART OF THAT.
17 SO THEY GET TAMALES AND SALSA FOR THEIR BREAK. ALL RIGHT.
18 STAND IN RECESS 15 MINUTES.

19 (RECESS TAKEN AT 11:46 A.M.; RESUMED AT 12:00 P.M.)

20 **THE CLERK:** REMAIN SEATED. COURT IS IN SESSION.
21 COME TO ORDER.

22 **THE COURT:** OKAY. LET'S SEE IF THEY ARE READY TO
23 COME IN.

24 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

25 **THE COURT:** OKAY. WE ARE BACK ON THE RECORD. THE

1 RECORD WILL REFLECT THE JURY IS BACK WITH US.

2 SO A LITTLE STORY ABOUT THE SNACK I GAVE YOU GUYS. THE --
3 I'M MEXICAN-AMERICAN, GREW UP IN TEXAS. WHEN I CAME TO THE
4 FEDERAL BENCH -- WE DO BOTH CRIMINAL AND CIVIL. THE CRIMINAL
5 LAWYERS, THE LAWYERS WHO PRACTICE CRIMINAL, THEY SEE EACH
6 OTHER ALL THE TIME. THEY ARE VERY NICE TO EACH OTHER. EVEN
7 THOUGH THEY ARE ON OPPOSITE SIDES, THEY ARE VERY NICE.

8 I ALWAYS DO A HOLIDAY GET-TOGETHER. I INVITE ALL THE
9 ASSISTANT U.S. ATTORNEYS AND ALL THE ASSISTANT FEDERAL
10 DEFENDERS AND WE ALL GET TOGETHER. AND FOR FUN I SHIP IN
11 TAMALES FROM TEXAS. SO YOU WILL NEVER FIND THOSE TAMALES IN
12 CALIFORNIA, NORTHERN CALIFORNIA BECAUSE I SHIP THEM IN.

13 I GREW UP WITH THEM THAT WAY, WHICH ARE VERY MEATY AND NOT
14 A LOT OF MASA. THE ONES YOU BUY UP HERE ARE LIKE BURRITOS,
15 ALL MASA AND THERE'S NO MEAT. I HOPE YOU ENJOYED THEM. WE
16 MAKE THEM AT CHRISTMASTIME.

17 **JUROR:** YOU MAKE THEM YOURSELF?

18 **THE COURT:** I DO WITH MY MOM. WE ARE ALL SCHEDULED
19 NEXT WEEKEND TO MAKE THEM FOR CHRISTMAS. YOU KNOW, YOU HAVE
20 THEM FOR BREAKFAST, LUNCH, DINNER, SNACK. MY SON EATS THEM
21 DOZEN AT A TIME, BUT I CAN'T GIVE YOU MORE THAN A COUPLE;
22 OTHERWISE, YOU WILL FALL ASLEEP ON ME. JUST A TASTE. HOPE
23 YOU ENJOYED THEM.

24 **JURORS:** THANK YOU.

25 **THE COURT:** LET'S GET GOING.

1 **BY MS. NUGENT:**

2 **Q.** MR. JONES, JUST A COUPLE OF MORE QUESTIONS. WHEN WE LEFT
3 OFF AT THE BREAK, I WAS ABOUT TO TURN TO THE TERMINATION
4 MEETING. SO LET'S DO THAT NOW.

5 WHAT DO YOU REMEMBER ABOUT THE MEETING WHERE MS. NEWTON'S
6 CAREER AT SHELL ENDED?

7 **A.** WELL, I WAS CONTACTED THAT MORNING BY -- I FORGET WHO IT
8 WAS FROM HR BUT THEY ASKED ME IF I COULD ATTEND A TERMINATION
9 MEETING. AND --

10 **Q.** IS THAT A COMMON OCCURRENCE FOR YOU?

11 **A.** FOR TERMINATION MEETINGS, I'VE PARTICIPATED IN TWO IN MY
12 CAREER SO FAR.

13 **Q.** DOES THAT INCLUDE MS. NEWTON'S?

14 **A.** AT THAT TIME, SHE WAS THE FIRST ONE THAT I HAD ATTENDED.

15 **Q.** AND WHAT DO YOU RECALL ABOUT WHAT HAPPENED IN THAT
16 MEETING?

17 **A.** I RECALL THAT -- I BELIEVE IT WAS CHRISTINE LAYNE. IT
18 MIGHT HAVE BEEN MIKE BECK WHO ACTUALLY INFORMED CIARA THAT SHE
19 WAS BEING TERMINATED.

20 AND I THINK I HAD CAUTIONED CIARA BEFORE THE MEETING THAT,
21 YOU KNOW, I ADVISED HER TO RESIST THE TEMPTATION TO MAKE A BIG
22 SPEECH AND MAKE A LOT OF POINTS THAT, YOU KNOW, THAT YOU
23 SHOULD BE CAREFUL WHAT YOU STATE IN ONE OF THOSE MEETINGS, AND
24 TO JUST BE CAUTIOUS ABOUT WHAT YOU SAY DURING THAT MEETING --

25 **Q.** DID YOU --

1 **A.** -- WALKING INTO IT.

2 **Q.** NO, NO. SORRY.

3 **A.** THEY INFORMED --

4 **Q.** HOLD ON. I WILL ASK YOU SOME QUESTIONS.

5 **A.** OKAY.

6 **Q.** I AM SORRY THAT I TALKED OVER YOU THERE.

7 **A.** THAT'S ALL RIGHT.

8 **Q.** OKAY. SO YOU'VE TALKED NOW ABOUT WHAT YOU KNEW ABOUT THE
9 MEETING GOING INTO IT.

10 **A.** OKAY.

11 **Q.** AND ABOUT WHAT YOU TOLD CIARA BEFORE IT STARTED. SO NOW
12 HOW ABOUT WHAT HAPPENED IN THE MEETING? WHAT WAS DISCUSSED?

13 **A.** I RECALL CIARA ASKING WANTING TO KNOW SPECIFICALLY WHY SHE
14 WAS BEING TERMINATED.

15 **Q.** DID SHE GET A RESPONSE?

16 **A.** YEAH. THE WAY I RECALL WAS MIKE BECK TOLD HER IT WAS FOR
17 PERFORMANCE.

18 **Q.** OKAY. DO YOU RECALL ANYTHING ELSE?

19 **A.** I BELIEVE SHE BEGAN TO ASK A QUESTION ABOUT WHETHER SHE
20 COULD GET A COPY OF HER PD LOG AND SHE BECAME EMOTIONAL AND I
21 ASKED IF WE COULD TAKE A BREAK TO GIVE CIARA A FEW MINUTES TO
22 COMPOSE HERSELF.

23 **Q.** DID DO YOU RECALL ANYTHING MS. LAYNE SAID IN THAT MEETING
24 OR JUST GENERALLY?

25 **A.** I AM KIND OF DRAWING A BLANK RIGHT NOW.

1 Q. DID YOU TAKE A BREAK WITH MS. NEWTON?

2 A. I DID. WE WALKED DOWN THE HALL TO A CONFERENCE ROOM.

3 Q. WHAT DID YOU SAY TO HER THEN?

4 A. I THINK -- I ASKED HER IF SHE HAD EVER CONTACTED CHRIS
5 PALACIO, WHICH IS OUR COMMITTEE CHAIRMAN TO DISCUSS HARASSMENT
6 PAPERWORK OR SUBMITTING ONE OF THOSE. AND SHE SHARED WITH ME
7 THAT SHE HAD FELT LIKE SHE DIDN'T REALLY NEED TO PURSUE THAT.

8 THE IMPRESSION SHE WAS GETTING WAS THAT SHE HAD NAVIGATED
9 HER WAY OUT OF THE CONCERN ABOUT HER PERFORMANCE AND SHE HAD
10 BEEN ASKED BY WHOEVER TOOK OVER FOR CAMERON CURRAN, I BELIEVE
11 IT WAS MR. METCALF, WHAT SHE WANTED TO TRAIN ON NEXT. SO THAT
12 INDICATED TO HER THAT SHE WAS DOING OKAY.

13 Q. DID SHE SHARE ANYTHING ELSE WITH YOU WHILE THE TWO OF YOU
14 WERE IN THE HALLWAY TAKING A BREAK FROM THE MEETING SHE GOT
15 FIRED?

16 A. SHE DID. SHE MENTIONED THAT -- SHE BROUGHT UP THAT -- AN
17 EVENT THAT THIS OCCURRED AFTER THAT MEETING WHERE SOMEONE HAD
18 LEFT A STICKER ON HER DESK.

19 Q. WAS THAT THE FIRST THAT YOU HAD HEARD OF THE STICKER?

20 A. YES, IT WAS.

21 Q. WHAT WAS YOUR REACTION?

22 A. ONCE AGAIN, MY JAW DROPPED WHEN IT WAS DESCRIBED TO ME AND
23 I ASKED HER TO -- IF SHE HAD A COPY OF IT OR PICTURE THAT SHE
24 COULD FORWARD TO ME.

25 Q. OKAY. DID YOU GO BACK INTO THE MEETING WITH HER?

1 **A.** WE DID GO BACK INTO THE MEETING.

2 **Q.** THEN WHAT HAPPENED?

3 **A.** I THINK THEY HAVE A STANDARD FORMAT WHERE THEY PRESENT A
4 PACKAGE WITH THE INFORMATION ABOUT WHAT YOU SHOULD DO NEXT,
5 AND I THINK COBRA MEDICAL INFORMATION.

6 **Q.** DID ANYTHING ELSE HAPPEN IN THAT MEETING OR WAS THAT IT?

7 **A.** I THINK THAT WAS PRETTY MUCH IT. AND THEN CIARA WAS
8 ESCORTED BACK TO HER LOCKER TO COLLECT HER BELONGINGS.

9 **MS. NUGENT:** THANK YOU, MR. JONES. NOTHING FURTHER.

10 **THE COURT:** CROSS.

11 **MR. LAFAYETTE:** YES, YOUR HONOR.

12 **CROSS-EXAMINATION**

13 **BY MR. LAFAYETTE:**

14 **Q.** GOOD MORNING, MR. JONES.

15 **A.** GOOD MORNING.

16 **Q.** YOU ARE A NATIVE TEXAN?

17 **A.** YES, I AM.

18 **THE COURT:** I DIDN'T KNOW THAT.

19 **THE WITNESS:** GUILTY.

20 **BY MR. LAFAYETTE:**

21 **Q.** AND YOU PURSUED FOR TEN YEARS A DIFFERENT CAREER BEFORE
22 YOU DID THIS, DIDN'T YOU?

23 **A.** I DID.

24 **Q.** LITTLE SOFT SHOE?

25 **A.** YES. I WAS A THEATER ARTS MAJOR AT SAN JACINTO COLLEGE IN

1 PASADENA, TEXAS. AND IN 1979, I MOVED TO NEW YORK CITY TO
2 PURSUE THAT.

3 **Q.** ALL RIGHT. SO NOW, RIGHT NOW YOUR ROLE IN THE UNION, WHAT
4 IS YOUR ROLE IN THE UNION?

5 **A.** CURRENTLY -- WELL, THE ROLE THAT I DO PRIMARILY, I'M THE
6 HEALTH AND SAFETY REPRESENTATIVE. BUT I'M ALSO A MEMBER OF
7 OUR ADJUSTMENT COMMITTEE, AND THAT'S THE COMMITTEE THAT
8 HANDLES GRIEVANCES AND ALSO BARGAINING. AND I'M ALSO ON THE
9 EXECUTIVE BOARD OF OUR LOCAL, LOCAL FIVE.

10 **Q.** SO YOU ADVOCATE AGAINST MANAGEMENT, WITH MANAGEMENT ON
11 BEHALF OF THE UNION?

12 **A.** I AM NOT SURE I WOULD DESCRIBE IT LIKE THAT. I TRY TO
13 WORK WITH MANAGEMENT WHENEVER POSSIBLE. I THINK YOU GET A LOT
14 FURTHER WITH DIPLOMACY WITH SUGAR RATHER THAN YOU DO WITH
15 VINEGAR. BUT YEAH. THAT'S EXPECTED OF A UNION REP, TO BE
16 ABLE TO BUTT HEADS WITH MANAGEMENT WHEN CALLED UPON TO DEFEND
17 AND ADVOCATE FOR MY BROTHERS AND SISTERS.

18 **Q.** ALL RIGHT.

19 THERE WAS SOMETHING THAT YOU SAID AT THE BEGINNING AND I'M
20 GOING TO REFER TO IT AS THE JULY 22 MEETING. AND YOU MAY NOT
21 KNOW IT BY THAT DAY, BUT YOU SAID YOU WENT TO A MEETING AND
22 CAMERON CURRAN WAS THERE?

23 **MS. NUGENT:** OBJECTION, MISSTATES THE TESTIMONY.

24 **THE WITNESS:** YEAH. THE MEETINGS --

25 **THE COURT:** HOLD ON.

1 **MR. LAFAYETTE:** I WITHDRAW THE QUESTION. I WITHDRAW
2 THE QUESTION.

3 **THE COURT:** OKAY.

4 **BY MR. LAFAYETTE:**

5 **Q.** YOU WERE TOLD TO SHOW UP FOR A MEETING ON AUGUST 2?

6 **A.** THAT'S CORRECT. WELL, I WAS CALLED AND ASKED TO ATTEND.

7 **Q.** WHO ASKED YOU TO ATTEND?

8 **A.** THAT WAS -- WOULD BE NICK BACKENS.

9 **Q.** AND WHAT WAS HIS ROLE AT THE TIME?

10 **A.** HE WAS AN OPERATOR IN OPCEN AND HE'S ALSO A STEWARD.

11 **Q.** AND WHAT WAS THE REASON HE WANTED YOU TO ATTEND THIS
12 MEETING?

13 **A.** HE TOLD ME THAT HE -- HE WAS SCARED THAT THAT MEETING WAS
14 GOING TO TURN INTO A TERMINATION MEETING AND HE FELT LIKE HE
15 NEEDED SOME HELP.

16 **Q.** ALL RIGHT. AND --

17 **A.** HE ASKED ME IF I WOULD COME.

18 **Q.** THAT IS WHY YOU WENT?

19 **A.** I DID.

20 **Q.** YOU SPOKE ABOUT YOUR... THE AGREEMENT THAT THE UNION HAS
21 WITH MANAGEMENT. THERE'S A COLLECTIVE BARGAINING AGREEMENT?

22 **A.** YES, WE HAVE A COLLECTIVE BARGAINING AGREEMENT.

23 **MR. LAFAYETTE:** I DIDN'T KNOW THIS WAS GOING TO COME
24 UP WITH THIS WITNESS, YOUR HONOR BUT IT IS EXHIBIT 177.

25 MAY I APPROACH THE WITNESS AND SHOW THE WITNESS, YOUR

1 HONOR.

2 THE COURT: MAKE SURE YOU SHOW IT FIRST TO
3 MS. NUGENT.

4 YOU MAY.

5 MR. LAFAYETTE: THANK YOU, YOUR HONOR.

6 (EXHIBIT HANDED TO WITNESS.)

7 BY MR. LAFAYETTE:

8 Q. I JUST WANT YOU TO LOOK AT THAT, SIR, AND TELL ME IF THAT
9 WAS THE COLLECTIVE BARGAINING AGREEMENT BETWEEN MANAGEMENT AND
10 THE UNION.

11 I WANT YOU TO TELL ME IF THAT WAS THE COLLECTIVE
12 BARGAINING AGREEMENT?

13 A. YES. THIS LOOKS LIKE -- YEAH. THE ONE FEBRUARY 1ST,
14 2015. THAT'S OUR LAST CONTRACT PERIOD.

15 MR. LAFAYETTE: THANK YOU. I WOULD LIKE TO MOVE THIS
16 DOCUMENT IN EVIDENCE, YOUR HONOR.

17 THE COURT: ANY OBJECTION?

18 MS. NUGENT: EXCUSE ME.

19 (PAUSE IN THE PROCEEDINGS.)

20 MS. NUGENT: YEAH. THE OBJECTION IS THAT AT THE TIME
21 SHE IS NOT A MEMBER OF THE UNION.

22 THE COURT: GO AHEAD AND USE IT. I WILL ADDRESS THE
23 ADMISSIBILITY LATER.

24 MR. LAFAYETTE: THANK YOU, YOUR HONOR.

25 THE COURT: YOU CAN SHOW IT TO THE JURY.

1 **MR. LAFAYETTE:** ALL RIGHT. I JUST WANT IT IN
2 EVIDENCE. I WASN'T GOING TO SHOW ANY PARTS OF IT. I JUST
3 WANT IT IN EVIDENCE. THAT'S ALL.

4 **THE COURT:** WELL, HE'S AUTHENTICATED IT. WE'LL
5 DISCUSS IT LATER.

6 **MR. LAFAYETTE:** THANKS, YOUR HONOR.

7 **BY MR. LAFAYETTE:**

8 **Q.** NOW, WITH REGARD TO THIS MEETING THAT YOU DID ATTEND, WAS
9 CAMERON CURRAN IN THAT MEETING?

10 **A.** I DO NOT RECALL CAMERON BEING PRESENT AT THE MEETING I
11 ATTENDED.

12 **Q.** WAS JEFF FISCHER IN THAT MEETING?

13 **A.** I CAN'T RECALL JEFF BEING IN THE ROOM EITHER.

14 **Q.** SO WITH REGARD TO THE DESCRIPTION THAT YOU RECEIVED WITH
15 REGARD TO THE DRAEGER TUBE, THE VALVE AT THE BAKER TANK, AND
16 THE ACID SPILL, WHERE DID YOU -- WHO WAS IT THAT SPOKE TO
17 THOSE ISSUES?

18 **A.** I BELIEVE IT WAS CIARA OR IT COULD HAVE BEEN NICK THAT
19 BROUGHT THOSE UP. IT'S HARD TO RECALL WHO INITIATED EACH ONE
20 OF THE SUBJECTS.

21 **Q.** OKAY. AND SO YOUR UNDERSTANDING AS TO THE ACID SPILL, WAS
22 THAT A RESULT OF WHAT MS. NEWTON HAD SAID?

23 **A.** YEAH.

24 MY UNDERSTANDING OF THE EVENT, YEAH. SHE DESCRIBED THE
25 ROLE -- HER THOUGHTS DURING THAT EVENT. THAT'S WHAT I

1 REMEMBER. I REMEMBER HER TALKING ABOUT IT.

2 Q. DID YOU EVER GET ANY INFORMATION FROM ANYBODY ELSE ABOUT
3 WHAT HAD HAPPENED WITH THE ACID SPILL OTHER THAN FROM
4 MS. NEWTON?

5 A. THAT CONVERSATION WAS MY FIRST INTRODUCTION TO THE EVENT
6 EVEN HAPPENING.

7 Q. ALL RIGHT. AND THEN WITH REGARD TO WHATEVER SHE SAID
8 ABOUT JEFF FISCHER, DID YOU HAVE ANY SOURCES OF INFORMATION
9 ABOUT THOSE COMMENTS OTHER THAN WHAT MS. NEWTON SAID?

10 A. ARE YOU TALKING ABOUT ON THAT DATE --

11 Q. YES.

12 A. -- AUGUST 2ND? YEAH. THAT WAS MY FIRST EXPOSURE TO THOSE
13 EVENTS THAT I TALKED ABOUT EARLIER. YEAH. AND I DON'T RECALL
14 ANYBODY ELSE TALKING ABOUT THE RELATIONSHIP BETWEEN CIARA AND
15 JEFF FISCHER UNTIL THAT MEETING.

16 MR. LAFAYETTE: NO FURTHER QUESTIONS, YOUR HONOR.

17 THE COURT: ANYTHING ON THOSE QUESTIONS?

18 MS. NUGENT: NO, YOUR HONOR.

19 THE COURT: ALL RIGHT, SIR. YOU MAY STEP DOWN. YOU
20 ARE EXCUSED. THANK YOU.

21 THE WITNESS: THANK YOU.

22 THE COURT: NEXT WITNESS.

23 MS. NUGENT: YOUR HONOR, THE PLAINTIFF CALLS JEFF
24 FISCHER.

25 THE CLERK: REMAIN STANDING.

1 (JEFF FISCHER, CALLED AS A WITNESS FOR THE PLAINTIFF,
2 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

3 THE WITNESS: YES.

4 THE CLERK: PLEASE BE SEATED. AND THEN IF YOU'LL
5 SCOOT UP OR SCOOT THE MICROPHONE UP TO YOU. AND PLEASE STATE
6 YOUR FULL NAME AND SPELL YOUR LAST NAME.

7 THE WITNESS: MY NAME IS JEFFREY FISCHER. LAST NAME
8 IS SPELLED F-I-S-C-H-E-R.

9 THE COURT: GOOD AFTERNOON, MR. FISCHER. CAN YOU
10 MOVE CLOSER TO THE MICROPHONE?

11 THE WITNESS: SURE.

12 DIRECT EXAMINATION

13 BY MS. NUGENT:

14 Q. GOOD AFTERNOON, MR. FISCHER.

15 MS. NUGENT: YOUR HONOR, MAY I APPROACH?

16 THE COURT: YOU MAY.

17 (EXHIBIT BINDER HANDED TO WITNESS.)

18 THE COURT: WHAT DO YOU NEED?

19 MR. ETTINGHOFF: THE MONITOR.

20 THE COURT: PROCEED.

21 BY MS. NUGENT:

22 Q. MR. FISCHER, DO YOU WORK FOR SHELL AT ITS REFINERY IN
23 MARTINEZ?

24 A. I DO.

25 Q. HOW LONG HAVE YOU WORKED THERE?

1 **A.** NEXT MONTH, WILL HAVE COMPLETED 30 YEARS.

2 **Q.** HAVE YOU ALWAYS BEEN AT THE REFINERY IN MARTINEZ FOR THOSE
3 30 YEARS?

4 **A.** YES.

5 **Q.** ARE YOU LOOKING AT SOMETHING IN THE BINDER?

6 **A.** YES.

7 **Q.** YOU CAN CLOSE IT. I WILL TELL YOU WHEN TO GO THERE.

8 **A.** THANK YOU.

9 **Q.** WHAT DO YOU DO AT THE REFINERY NOW?

10 **A.** I'M A MENTOR.

11 **Q.** WHAT DOES THAT MEAN?

12 **A.** THAT MEANS I'M IN CHARGE OF TRAINING PROCEDURES,
13 CALIFORNIA LAW, AUDIT FINDINGS. I PERFORM ALL THE CHANGES.

14 **Q.** WHO ARE YOU A MENTOR TO?

15 **A.** OPCEN. I WORK FOR LEARNING AND DEVELOPMENT DEPARTMENT,
16 WHICH IS A DEPARTMENT OF HR.

17 **Q.** AND HOW LONG HAVE YOU BEEN A MENTOR?

18 **A.** ABOUT FIVE YEARS.

19 **Q.** AND YOU'RE STILL A MENTOR NOW?

20 **A.** YES.

21 **Q.** DO YOU GIVE CLASSES AS A MENTOR TO NEW HIRES?

22 **A.** I DO.

23 **Q.** AND OPCEN IS PART OF THE PRODUCTION DEPARTMENT, RIGHT?

24 **A.** IT'S CALLED OPERATION CENTRAL AND IT IS ONE OF THE
25 DEPARTMENTS OF MARTINEZ REFINERY.

1 Q. IN 2016, WAS ERIC PEREZ, THE PRODUCTION SUPERVISOR, THERE
2 FOR OPCEN?

3 A. I BELIEVE SO.

4 Q. AND YOU UNDERSTOOD HIS ROLE TO BE IN CHARGE OF PEOPLE,
5 ISN'T THAT RIGHT?

6 A. YES.

7 Q. AND IN 2016, THE HIGHEST RANKING POSITION IN OPCEN WAS
8 CALLED MANAGER, RIGHT?

9 A. YEAH.

10 Q. AND THAT PERSON IN THAT POSITION WHO IS THE MANAGER OF
11 OPCEN WAS MIKE BECK, RIGHT?

12 A. CORRECT.

13 Q. DID YOU SUPERVISOR CIARA NEWTON FOR SOME PORTION OF TIME
14 IN 2016?

15 A. YES.

16 Q. YOU WERE IN CHARGE OF HER INITIAL TRAINING TO QUALIFY AS
17 AN OPERATOR, ISN'T THAT RIGHT?

18 A. SHE WENT TO A CLASS FOR TWO MONTHS BEFORE SHE CAME TO
19 OPCEN.

20 Q. AND THEN WHEN SHE CAME TO OPCEN, YOU WERE HER SUPERVISOR
21 FOR A SET AMOUNT OF TIME, RIGHT?

22 A. ONE OF HER SUPERVISOR, YES. TRAINING SUPERVISOR.

23 Q. PART OF THAT TRAINING INCLUDED CLASSROOM TRAINING THAT YOU
24 LED, RIGHT?

25 A. CORRECT.

1 Q. THERE WERE THREE OTHER PEOPLE IN HER TRAINING AND THOSE
2 PEOPLE WERE JOSE NAVARRO, ODEMENA EKELEMU, AND PATRICK NEUMAN,
3 RIGHT?

4 A. YES.

5 Q. YOU STARTED THE CLASS WITH THOSE THREE GUYS AND CIARA
6 NEWTON IN FEBRUARY 2016, RIGHT?

7 A. YEP.

8 Q. AND IT CONTINUED FOR ABOUT SIX OR SEVEN WEEKS, ISN'T THAT
9 TRUE?

10 A. YES.

11 Q. THE FIXED START TIME FOR THE CLASSROOM TRAINING THAT YOU
12 LED WAS 6:30; ISN'T THAT RIGHT?

13 A. 6:00 O'CLOCK.

14 MS. NUGENT: YOUR HONOR, I WOULD LIKE TO PLAY A CLIP
15 FROM MR. FISCHER'S DEPOSITION AT 131, 12 THROUGH 25.

16 (PAUSE IN THE PROCEEDINGS.)

17 THE COURT: YOU SAID 131?

18 MS. NUGENT: YES. STARTING AT LINE 12.

19 THE COURT: GO AHEAD.

20 (VIDEO DEPOSITION PLAYED AS FOLLOWS.)

21 "QUESTION: WHAT -- DID YOU HAVE A FIXED START TIME
22 FOR YOUR TRAINING CLASSES?

23 "ANSWER: YEAH, LIKE 6:30.

24 "QUESTION: 6:30."

25 MR. LAFAYETTE: YOUR HONOR, I THINK IT SHOULD READ --

(VIDEO CONTINUES PLAYING.)

"HOW DID YOU COMMUNICATE THAT START TIME TO YOUR TRAINEES?

"THE FIRST DAY WHEN THEY CAME IN THE CLASS.

"OKAY. AND WAS THAT COMMUNICATED VERBALLY" --

MR. LAFAYETTE: I THINK IT SHOULD READ THROUGH 132:6.

THE COURT: AGREED.

MS. NUGENT: OKAY. I'LL READ IT.

"QUESTION: OKAY. WHAT -- DID YOU HAVE A FIXED START
TIME FOR YOUR TRAINING CLASSES?

"ANSWER: YEAH, LIKE 6:30.

"QUESTION: 6:30? AND HOW DID YOU COMMUNICATE THAT
START TIME TO YOUR TRAINEES?

"ANSWER: THE FIRST DAY WHEN THEY CAME IN THE CLASS.

"QUESTION: OKAY. AND WAS THAT COMMUNICATED VERBALLY
OR IN WRITING?

"ANSWER: VERBALLY. VERBAL AGREEMENT BETWEEN THE
CLASS AND MYSELF.

"QUESTION: OKAY. AND AT 6:30 -- SORRY. WAS THE
START TIME 6:30 EVERY DAY DURING THAT SIX TO SEVEN
PERIOD WHERE YOU WERE TRAINING THE FOUR PEOPLE IN THE
HP-2?

"ANSWER: WELL, FOR THAT CLASS, IT MIGHT HAVE BEEN
6:00 O'CLOCK.

"QUESTION: THE VERY LAST DAY?

"ANSWER: NO, THE FIRST DAY."

1 **BY MS. NUGENT:**

2 **Q.** IT IS FAIR TO SAY YOU ARE NOT SURE WHAT TIME THAT TRAINING
3 CLASS STARTED EVERY MORNING, ISN'T IT?

4 **A.** I THOUGHT I CORRECTED MYSELF WHEN I READ THAT BACK TO YOU
5 THAT IT WAS 6:00 O'CLOCK FOR THAT ONE. I TEACH MANY CLASSES.
6 THE CLASS DECIDES WHAT TIME WE START. THEY DECIDED THEY
7 WANTED TO START AT 6:00 O'CLOCK AND END AROUND 3:30 BECAUSE OF
8 TRAFFIC.

9 **Q.** YOU DOCUMENTED IN THE PD LOG EACH TIME MS. NEWTON WAS
10 LATE, DIDN'T YOU?

11 **A.** NO, I FORGOT SOME.

12 **MS. NUGENT:** YOUR HONOR, I WOULD LIKE TO READ FROM
13 THE WITNESS'S DEPOSITION, 145, 4 THROUGH 6.

14 **THE COURT:** ALL RIGHT. GO AHEAD.

15 **MS. NUGENT:** (READING)

16 "QUESTION: DID YOU DOCUMENT IN THE PD LOG EACH TIME
17 CIARA WAS TARDY?

18 "ANSWER: I BELIEVE SO."

19 **BY MS. NUGENT:**

20 **Q.** MR. FISCHER, I'VE BEEN READING FROM YOUR DEPOSITION. YOU
21 REMEMBER WHEN THAT WAS TAKEN, RIGHT?

22 **A.** YEAH.

23 **Q.** YOU TOOK THE OATH TO TELL THE TRUTH?

24 **A.** YEP.

25 **Q.** AND AFTERWARDS YOU HAD AN OPPORTUNITY TO REVIEW WHAT WAS

1 IN THIS DEPOSITION AND MAKE ANY CHANGES THAT YOU WANTED TO
2 MAKE?

3 **A.** NOT TO THE FIRST ONE.

4 **Q.** PLEASE ANSWER MY QUESTION.

5 YOU HAD THE OPPORTUNITY TO MAKE ANY CHANGES THAT YOU
6 WANTED TO MAKE TO THE TESTIMONY THAT YOU GAVE UNDER OATH IN
7 THIS DEPOSITION, DIDN'T YOU?

8 **MR. LAFAYETTE:** OBJECTION, PREVIOUSLY ASKED AND
9 ANSWERED.

10 **THE COURT:** OVERRULED.

11 WERE YOU GIVEN THE OPPORTUNITY OR NOT? THAT'S ALL WE NEED
12 TO KNOW.

13 **THE WITNESS:** I GOT TO SEE THE GATE CARDS.

14 **BY MS. NUGENT:**

15 **Q.** I'M TALKING ABOUT YOUR TESTIMONY IN THIS DEPOSITION. YOU
16 DIDN'T CHANGE THAT PORTION OF IT, DID YOU?

17 **A.** NO.

18 **Q.** ONE OF THE TIMES THAT MS. NEWTON WAS LATE WAS A FEW WEEKS
19 AFTER HER FATHER DIED, RIGHT?

20 **A.** I WOULD HAVE TO CHECK MY RECORDS.

21 **Q.** YOU RECALL HER BEING LATE FOR ABOUT AN HOUR, 45 MINUTES TO
22 AN HOUR IN MARCH 2016 AND TEXTING YOU ABOUT IT?

23 **A.** I DO HAVE TEXT. I DON'T KNOW EXACTLY WHAT DATE IT IS.

24 **Q.** YOU PUT A DATE ON HER PD LOG THAT SHE WAS LATE OF
25 MARCH 23RD; DO YOU RECALL THAT?

1 **A.** CAN I LOOK AT IT, PLEASE?

2 **Q.** 83. IT IS IN FRONT OF YOU.

3 **A.** IS THAT FOR 3/23?

4 **Q.** NO, IT'S EXHIBIT 83. THERE SHOULD BE A TAB.

5 **A.** OKAY.

6 **Q.** DO YOU SEE THAT?

7 **A.** YES.

8 **Q.** SO MARCH 23RD, 2016, DO YOU SEE THAT?

9 **A.** YES.

10 **Q.** YOU GAVE HER A COUNSELING; SHE WAS ONE HOUR LATE?

11 **A.** YES.

12 **Q.** AND THAT WAS THE DATE THAT SHE TEXTED YOU AND SHE SAID HER
13 FAMILY NEEDED HER, DIDN'T SHE?

14 **A.** DO YOU HAVE THE TEXT.

15 **Q.** I'M ASKING YOU THE QUESTION, MR. FISCHER.

16 **A.** YES.

17 **Q.** DO YOU RECALL THAT OR NOT?

18 SHE DID, DIDN'T SHE?

19 **A.** THERE WERE SEVERAL TEXTS. I'M TRYING TO REFER TO WHICH
20 TEXT YOU WOULD LIKE ME TO LOOK AT.

21 **Q.** I'M NOT ASKING YOU TO LOOK AT A TEXT.

22 I'M ASKING YOU THAT WAS THE DATE THAT YOU PUT IN HER PD
23 LOG AFTER SHE TOLD YOU THAT HER FAMILY NEEDED HER.

24 ISN'T THAT TRUE?

25 **A.** I DO NOT KNOW IF THAT'S TRUE OR NOT. I WOULD HAVE TO LOOK

1 AT MY TEXT.

2 Q. WHILE YOU'RE LOOKING AT THAT, THERE'S ALSO ANOTHER DATE,
3 APRIL 7TH, DO YOU SEE THAT?

4 A. YES.

5 Q. SHE WASN'T LATE ON THAT DAY, WAS SHE?

6 A. I DON'T KNOW. I WOULD HAVE TO GO LOOK.

7 Q. NOBODY EVER TOLD YOU THAT ACCORDING TO SHELL'S OWN RECORDS
8 SHE CAME THROUGH THE GATE AT 6:01?

9 A. I DO NOT HAVE ACCESS TO THOSE RECORDS.

10 Q. NOBODY EVER GAVE YOU ACCESS TO THOSE RECORDS?

11 A. WELL, CLASS STARTS AT 6:00 O'CLOCK AND YOU'RE SUPPOSED TO
12 BE SUITED UP AND READY TO GO AT THAT TIME.

13 Q. WHAT DOES IT SAY THERE, 4/7?

14 A. CIARA WAS 45 MINUTES LATE AND WAS GIVEN A TARDY. JEFF
15 FISCHER AND ERIC PEREZ SAT DOWN WITH CIARA AND EXPLAINED TO
16 CIARA THE ATTENDANCE POLICY AND MADE SURE THERE WAS NOT AN
17 ISSUE.

18 Q. NOBODY TOLD YOU THAT SHE CAME THROUGH THE GATE AT
19 6:01 THAT MORNING?

20 A. NO, I JUST KNOW WHEN THEY SHOW UP FOR THE CLASS.

21 Q. SO UP UNTIL TODAY THROUGHOUT ALL OF THIS LITIGATION, YOU
22 HAVE NEVER LOOKED AT THOSE GATE LOGS?

23 A. I HAVE JUST SEEN SOME OF THE GATE LOGS RECENTLY.

24 Q. DID YOU LOOK --

25 A. I'VE NEVER GOT TO SEE THEM.

1 Q. DID YOU LOOK AT THE ONE FOR 4/7?

2 A. NO, I DID NOT GO THROUGH THEM. I JUST KNOW WE'VE HAD GATE
3 LOGS.

4 Q. OKAY. YOU DIDN'T BOTHER TO GO BACK AND CHECK AND CORRECT
5 THIS, DID YOU?

6 A. I'M NOT REALLY PRIVY TO THOSE.

7 Q. NEVER --

8 A. I AM NOT ALLOWED TO REQUEST THEM OR HAVE THEM IN MY
9 POSSESSION, OR -- I AM NOT HIGH ENOUGH THERE TO GET THOSE.

10 Q. NOBODY FROM THE COMPANY HAS TOLD YOU THAT WHEN YOU WROTE
11 HER UP ON THAT PD LOG FOR BEING 45 MINUTES LATE, THAT SHE
12 ACTUALLY CAME THROUGH THE GATE AT 6:01 THAT MORNING; NO ONE
13 HAS TOLD YOU THAT?

14 MR. LAFAYETTE: OBJECTION TO THE EXTENT IT MAY
15 VIOLATE ATTORNEY-CLIENT PRIVILEGE COMMUNICATION.

16 THE COURT: SUSTAINED.

17 BY MS. NUGENT:

18 Q. ALL RIGHT. LET'S TALK ABOUT THE SCHEDULE THAT ALL OF
19 THE -- THOSE FOUR NEW HIRE OPERATORS WERE WORKING WHEN THEY
20 WERE TRAINING WITH YOU.

21 WERE THEY WORKING A 9/80 SCHEDULE?

22 A. I BELIEVE SO.

23 Q. AND ON A 9/80 SCHEDULE, THE OPERATORS GET EVERY OTHER
24 FRIDAY OFF, RIGHT?

25 A. CORRECT.

1 Q. DID YOU EVER PUT ANY ENTRY ON JOSE NAVARRO'S PD LOG WHEN
2 HE WAS LATE FOR YOUR CLASS?

3 A. NOT THAT I CAN REMEMBER.

4 Q. BUT HE WAS LATE, WASN'T HE?

5 A. NOT THAT I CAN REMEMBER. I DON'T HAVE HIS PD FILE.

6 Q. ALL THREE OF THE MALE EMPLOYEES WHO WERE TRAINING UNDER
7 YOU WITH MS. NEWTON STILL WORK AT THE SHELL REFINERY, DON'T
8 THEY?

9 A. NOW THEY DO, YES.

10 Q. ALL RIGHT. LET'S ADDRESS SOME OF THE COMMENTS THAT THE
11 JURY HAS HEARD YOU MAKE. SOME COMMENTS THAT THEY HAVE HEARD
12 YOU MAKE IN THIS CASE.

13 YOU MADE A COMMENT TO MS. NEWTON THAT IT USED TO BE SONS
14 OF EMPLOYEES THAT GOT HIRED. ISN'T THAT TRUE?

15 A. SURE.

16 Q. YOU SAID THAT WOMEN DON'T MAKE IN OPCEN.

17 A. ABSOLUTELY NOT.

18 Q. YOU SAID WOMEN DON'T LAST LONG.

19 A. ABSOLUTELY NOT.

20 Q. YOU TOLD MS. NEWTON THAT SHE COULDN'T BE ASSIGNED TO A
21 SPECIFIC TEAM BECAUSE THEY ALREADY HAD A GIRL ON THAT TEAM.
22 ISN'T THAT TRUE?

23 A. NO, YOUR PHRASE IS DIFFERENT.

24 Q. WHAT PHRASE DID YOU USE?

25 A. THE GIRLS IN OPCEN LIKE TO HAVE THEIR -- BE ON THEIR OWN

1 TEAM. THEY LIKE THEIR OWN BATHROOM AND SO ON, AND LOCKER
2 ROOM, AND SO ON.

3 Q. YOU ALSO CALLED A MALE EMPLOYEE ON THE TEAM PRACTICALLY A
4 GIRL BECAUSE HE BITCHES ALL THE TIME. ISN'T THAT TRUE?

5 A. NO.

6 Q. WHEN YOU LEARNED THAT MS. NEWTON WAS GOING TO BE ASSIGNED
7 TO OPCEN IN 2016 YOU WERE UPSET, WEREN'T YOU?

8 A. NO.

9 Q. YOU SAID, WHO DO I HAVE TO PISS OFF TO HAVE ALL THESE
10 ASSHOLES COMING TO MY DEPARTMENT, OR SOMETHING TO THAT EFFECT,
11 DIDN'T YOU?

12 A. NO.

13 Q. NEVER SAID ANYTHING LIKE THAT?

14 A. NO.

15 Q. JUST NOT LIKE, UH?

16 MR. LAFAYETTE: OBJECTION, ARGUMENTATIVE.

17 THE COURT: THE LAST QUESTION IS. SUSTAINED.

18 BY MS. NUGENT:

19 Q. YOU SAID TO HER, WHO WOULD HIRE CIARA NEWTON, DIDN'T YOU?

20 A. NO.

21 Q. YOU TOLD HER THAT SHE MUST HAVE PUT ON A GOOD SHOW IN THE
22 INTERVIEW. ISN'T THAT TRUE?

23 A. NO.

24 Q. YOU DID LEARN AT SOME POINT THAT ONE OF MS. NEWTON'S
25 DRAWINGS THAT SHE HAD DONE IN THE TRAINING HAD BEEN ERASED OFF

1 OF THE WHITE BOARD AND REPLACED WITH THE WORD "FAIRY", RIGHT?

2 YOU LEARNED THAT --

3 **A.** SHE HAD TOLD ME ABOUT SOMETHING LIKE THAT, YES. I DID NOT
4 SEE THAT.

5 **Q.** AND YOU NEVER BOTHERED TO ASK ANYBODY ABOUT WHO HAD DONE
6 THAT, DID YOU?

7 **A.** NO. I ASKED OUR GUYS BUT --

8 **Q.** YOU DID?

9 **A.** MENA AND JOSE.

10 **Q.** DID YOU ASK ANYBODY ELSE?

11 **A.** I ASKED THEM IF THEY DID IT BECAUSE EACH PERSON HAD A
12 SECTION OF WHITE BOARD TO WRITE ON.

13 NOT THAT I REMEMBER.

14 **Q.** YOU TRIED TO INTIMIDATE MS. NEWTON DURING THAT CLASSROOM
15 TRAINING, DIDN'T YOU?

16 **A.** NO.

17 **Q.** YOU LEARNED AT SOME POINT THAT SHE SAID THAT, DIDN'T YOU?

18 **MR. LAFAYETTE:** OBJECTION, ATTEMPT TO VIOLATE THE
19 ATTORNEY-CLIENT PRIVILEGE.

20 **THE COURT:** REPHRASE. SUSTAINED AS TO THAT GROUND.

21 **BY MS. NUGENT:**

22 **Q.** WOULD YOU DESCRIBE YOURSELF AS A PATIENT TEACHER?

23 **A.** SOMETIMES.

24 **Q.** HOW ELSE WOULD YOU DESCRIBE YOUR TRAINING STYLE?

25 **A.** WHATEVER IT TAKES. I'M AN EXTREMELY HARD WORKER. I'M

1 EXTREMELY DEDICATED --

2 Q. LET'S TALK ABOUT --

3 A. -- TO MY STUDENTS.

4 MR. LAFAYETTE: SHE'S CUTTING HIM OFF.

5 MS. NUGENT: HE'S ANSWERED THE QUESTION.

6 BY MS. NUGENT:

7 Q. LET'S TALK ABOUT WHEN YOU WHITED OUT THE --

8 THE COURT: DO NOT CUT HIM OFF.

9 MS. NUGENT: OKAY.

10 THE COURT: GO AHEAD. NEXT QUESTION.

11 BY MS. NUGENT:

12 Q. LET'S TALK ABOUT WHEN YOU WHITED OUT SIGNATURES FROM
13 MS. NEWTON'S PARALLEL TRAINING CHECKLIST. OKAY?

14 A. SURE.

15 Q. YOU WHITED OUT THE INITIALS OF MULTIPLE OPERATORS WHO HAD
16 ALREADY QUALIFIED HER ON CERTAIN PIECES OF EQUIPMENT AND
17 CERTAIN SKILLS SO SHE COULD BE AN OPERATOR; ISN'T THAT TRUE?

18 A. THAT IS NOT TRUE. I WHITED OUT ONE OPERATOR'S SIGNATURE.

19 Q. THAT WAS CHRIS SALAS?

20 A. THAT IS CORRECT.

21 Q. ALL RIGHT. SO WE WILL GO WITH THAT FOR NOW.

22 DID YOU WHITE OUT HIS SIGNATURE FROM ANY OF THE OTHER
23 THREE OPERATORS WHO WERE IN HER SAME NEW HIRE CLASS?

24 A. I DID NOT KNOW AT THAT TIME THAT CHRIS WAS SIGNING THEIRS
25 ALSO.

1 Q. YOU DIDN'T BOTHER TO FIND OUT?

2 A. I HAD WITNESSED CHRIS SIGNING CIARA'S PAPER. THAT'S HOW I
3 KNEW.

4 Q. AND THEN AFTER YOU WITNESSED THAT AND WHITED IT OUT ON
5 CIARA'S PAPERWORK, YOU DIDN'T DO ANYTHING TO GO FIND OUT IF
6 MR. SALAS HAD BEEN QUALIFYING OTHER OPERATORS?

7 A. I DIDN'T KNOW HE WAS DOING THAT.

8 Q. YOU DIDN'T BOTHER TO FIND OUT, RIGHT? YES OR NO.

9 A. I TOLD CHRIS AT THAT TIME HE WAS NOT ALLOWED TO.

10 Q. YOU GOT OVERRULED, RIGHT?

11 MR. LAFAYETTE: OBJECTION, QUESTION IS ARGUMENTATIVE,
12 VAGUE AND AMBIGUOUS.

13 THE COURT: OVERRULED.

14 YOU CAN ANSWER.

15 THE WITNESS: YEAH. SO GRAYSON AND I HAD TALKED
16 ABOUT IT. GRAYSON WAS OUR SUPERVISOR. GRAYSON IS IN CHARGE
17 OF SELECTING WHO BECOMES A SME, A SUBJECT MATTER EXPERT.

18 WHAT HAD HAPPENED WAS IS GRAYSON CAME TO ME AND SAID IT'S
19 ABOUT TIME THAT CHRIS BECOMES A SME FOR OUR DEPARTMENT. SO I
20 ALLOWED CHRIS TO RE-SIGN CIARA'S PAPERWORK.

21 BY MS. NUGENT:

22 Q. AND AT THAT TIME YOU DIDN'T CHECK ANY OF THE OTHER GUYS'
23 PAPERWORK TO SEE IF CHRIS HAD BEEN ON THEIRS EITHER, DID YOU?

24 A. I WAS NOT THEIR TRAINING SUPERVISOR AT THE TIME. I WAS
25 DOING OTHER THINGS. I DIDN'T EVEN THINK ABOUT THAT.

1 Q. ONLY MS. NEWTON'S PAPERWORK GOT THAT KIND OF SCRUTINY FROM
2 YOU; ISN'T THAT TRUE?

3 A. BECAUSE I WITNESSED THAT HAPPENING WITH CIARA AND CHRIS.

4 Q. HOW LONG HAD CHRIS SALAS WORKED AT THE REFINERY AT THAT
5 TIME?

6 A. I DO NOT KNOW HIS START DATE.

7 Q. HOW LONG DO YOU THINK HE HAD BEEN WORKING THERE?

8 A. MAYBE MORE THAN FIVE YEARS.

9 MS. NUGENT: I HAVE NOTHING FURTHER.

10 THE COURT: ANY EXAMINATION AT THIS POINT?

11 MR. LAFAYETTE: JUST A LITTLE BIT, YOUR HONOR.

12 **CROSS-EXAMINATION**

13 BY MR. LAFAYETTE:

14 Q. YOU WERE LOOKING AT EXHIBIT 83. DO YOU STILL HAVE IT UP
15 IN FRONT OF YOU?

16 A. YES.

17 Q. WITH REGARD TO THAT EXHIBIT, THERE'S A REFERENCE THERE TO
18 AN APRIL 7TH DATE. DO YOU SEE THAT?

19 A. YES.

20 (DISPLAYED ON SCREEN.)

21 Q. DO YOU KNOW IF APRIL 7TH WAS THE DATE THAT YOU MET WITH
22 MS. NEWTON OR IF THAT'S THE DATE OF THE TARDY?

23 A. WELL, THAT WOULD BE THE DATE THAT I ENTERED THIS IN, NOT
24 THE DATE OF THE ACTUAL TARDY. THIS WOULD BE THE DATE THAT WE
25 SAT DOWN WITH CIARA AND DID THIS.

1 Q. DID YOU TREAT HER DIFFERENTLY BECAUSE SHE WAS A WOMAN?

2 MS. NUGENT: LEADING.

3 THE WITNESS: ABSOLUTELY NOT.

4 THE COURT: SUSTAINED. THE ANSWER IS STRICKEN. OPEN
5 ENDED.

6 BY MR. LAFAYETTE:

7 Q. YOU HAD A CLASS OF FOUR -- HOW MANY PEOPLE WERE IN YOUR
8 TRAINING CLASS?

9 A. FOUR.

10 Q. DID YOU MAKE ANY ENTRIES IN THE PD LOG OF ANYBODY IN THAT
11 CLASS OTHER THAN MS. NEWTON?

12 A. I DON'T REMEMBER. I MAKE ENTRIES IN 60, 70 OTHER
13 EMPLOYEES' PD LOGS. IF THEY DO SOMETHING GOOD, IF THEY DO
14 SOMETHING BAD, I MAKE ENTRIES IN EVERYBODY'S PD LOG, NOT JUST
15 THOSE FOUR. I DON'T REMEMBER ANYTHING ELSE.

16 Q. WHAT WAS YOUR GOAL IN THE TRAINING CLASS WITH REGARD TO
17 THE FOUR PEOPLE THAT YOU HAD?

18 A. I WAS UNDER A TIME CRUNCH FOR A BIG TURNAROUND COMING UP.
19 TURNAROUND IS WHEN WE TAKE ONE OF THOSE UNITS COMPLETELY DOWN,
20 REFURBISH IT, BUILD IT UP BACK UP.

21 I'M IN CHARGE OF UP TO A THOUSAND EMPLOYEES AT THAT TIME.
22 SO MY JOB WAS TO GET THE CLASS DONE IN SIX TO EIGHT WEEKS, AND
23 GET THEM TRAINED UP AND RELEASE THEM TO THEIR CREWS WITH ALL
24 THEIR PAPERWORK COMPLETED.

25 Q. HOW DID YOU TREAT MS. NEWTON?

1 **A.** I THOUGHT I TREATED HER PRETTY GOOD. I SPENT A LOT OF
2 EXTRA TIME WITH HER BECAUSE OF HER BEING GONE TO GET HER
3 CAUGHT BACK UP TO EVERYBODY.

4 **Q.** DID YOU MAKE ANY COMMENTS TO HER COWORKERS ABOUT WHAT THEY
5 SHOULD DO, IF ANYTHING, BECAUSE SHE WAS GONE?

6 **A.** NO. I WANTED TO HELP HER OUT. SHE JUST LOST HER FATHER
7 THE FIRST DAY OF MY CLASS, AND WE WERE TRYING TO DO EVERYTHING
8 WE COULD TO HELP HER, AND THEN MAKE GAME PLAN FOR WHEN SHE
9 COMES BACK TO HELP HER GET CAUGHT BACK UP.

10 **Q.** DID YOU TREAT HER DIFFERENTLY THAN THE OTHER THREE?

11 **A.** ABSOLUTELY... I WOULD SAY NO. YOU'RE -- WHEN YOU STEP IN
12 TO OPCEN, YOU ARE PART OF THE OPCEN FAMILY, YOU ARE PART OF
13 THE SHELL FAMILY.

14 **Q.** AND AFTER -- WHEN DID YOU LEAVE TRAINING AND GO TO
15 OPCEN -- TO THE TURNAROUND?

16 **A.** I DO NOT KNOW THE EXACT DATE. I BELIEVE I HAD TO LEAVE
17 TWO WEEKS EARLY.

18 **Q.** TWO WEEKS EARLY?

19 **A.** I DON'T KNOW THE EXACT DATE I HAD TO GO.

20 **Q.** CAN YOU GIVE ME A MONTH IN WHICH YOU THOUGHT YOU HAD TO
21 GO?

22 **A.** AT THE END OF MAY, BEGINNING OF JUNE.

23 **MR. LAFAYETTE:** NO FURTHER QUESTIONS AT THIS TIME
24 BASED UPON THE DIRECT, YOUR HONOR, BUT I WILL RESERVE ON THIS
25 WITNESS.

1 **THE COURT:** ALL RIGHT. ANYTHING -- ANY EXAMINATION
2 ON LIMITED TO THE SCOPE?

3 **MS. NUGENT:** YES, I HAVE ONE QUESTION.
4 MAY I APPROACH, YOUR HONOR?

5 **THE COURT:** YOU MAY.

6 (EXHIBIT HANDED TO WITNESS.)

7 **THE COURT:** WHICH EXHIBIT ARE YOU SHOWING HIM?

8 **REDIRECT EXAMINATION**

9 **BY MS. NUGENT:**

10 **Q.** MR. FISCHER, I'VE SHOWN YOU WHAT'S BEEN MARKED AS
11 EXHIBIT 9.

12 DO YOU SEE THAT?

13 **A.** YES.

14 **Q.** IS THAT THE BOTTOM OF THE PAGE AN EMAIL YOU WROTE?

15 **A.** YES.

16 **Q.** AND ON THAT EMAIL IT SAYS, CIARA NEWTON WAS 45 MINUTES
17 LATE. IS THAT TRUE?

18 **A.** ACCORDING TO THIS, YES.

19 **Q.** ALL RIGHT.

20 **MS. NUGENT:** I WOULD LIKE TO MOVE EXHIBIT 9 INTO
21 EVIDENCE.

22 **MR. LAFAYETTE:** NO OBJECTION.

23 **THE COURT:** EXHIBIT 9 IS ADMITTED.

24 (PLAINTIFF'S EXHIBIT 9 RECEIVED IN EVIDENCE)

25 **MS. NUGENT:** I DON'T NEED THE ELMO WE HAVE THE

1 SCREEN.

2 (DISPLAYED ON SCREEN.)

3 **BY MS. NUGENT:**

4 **Q.** MR. FISCHER, YOU JUST TOLD THE JURY THAT ON APRIL 7TH,
5 EVEN THOUGH YOU PUT THAT IN THE PD LOG AS MS. NEWTON BEING
6 LATE FOR 45 MINUTES, THAT WASN'T THE ACTUAL DATE, NOW THAT YOU
7 ARE LOOKING AT EXHIBIT 9, ISN'T IT TRUE THAT YOU THOUGHT THAT
8 WAS THE ACTUAL DATE THAT SHE WAS LATE FOR 45 MINUTES.

9 **MR. LAFAYETTE:** OBJECTION, IT'S ARGUMENTATIVE AND
10 MISSTATES THE WITNESS'S PRIOR TESTIMONY.

11 **THE COURT:** OVERRULED.

12 **BY MS. NUGENT:**

13 **Q.** WHICH IS IT?

14 **A.** WELL, SINCE I DON'T REMEMBER THE EXACT DATE THAT I WROTE
15 THIS DOWN, THIS IS THE EXACT DATE THAT I WROTE IT IN THE BOOK.
16 SO....

17 **Q.** DID YOU GO BACK AND TAKE A LOOK AT HER GATE LOG TO SEE
18 WHAT TIME SHE ARRIVED TO WORK ON APRIL 7TH?

19 **A.** ONCE AGAIN, I'M NOT PRIVY TO THE GATE LOG. I'M PRIVY TO
20 WHEN THEY SHOW UP TO MY CLASS AND SIT DOWN, SUITED UP, AND
21 READY TO WORK.

22 **MS. NUGENT:** I HAVE NOTHING FURTHER.

23 **THE COURT:** ANYTHING ON THIS EMAIL?

24 **MR. LAFAYETTE:** NOTHING ELSE, YOUR HONOR.

25 **THE COURT:** ALL RIGHT, SIR. YOU LEAVE THOSE

1 DOCUMENTS THERE. YOU MAY STEP DOWN.

2 NEXT WITNESS.

3 **MS. SMALLETS:** THE PLAINTIFF CALLS MIKE BECK.

4 **THE CLERK:** IF YOU WILL REMAIN STANDING.

5 **(MICHAEL BECK,** CALLED AS A WITNESS FOR THE PLAINTIFF,
6 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

7 **THE WITNESS:** I DO.

8 **THE CLERK:** PLEASE BE SEATED. THEN IF YOU WILL PULL
9 THE MICROPHONE TOWARD YOU, AND THEN PLEASE STATE YOUR FULL
10 NAME AND SPELL YOUR LAST NAME.

11 **THE WITNESS:** MICHAEL ANTHONY BECK, B-E-C-K.

12 **THE COURT:** GOOD AFTERNOON, MR. BECK.

13 **THE WITNESS:** HI.

14 **THE COURT:** YOU MAY PROCEED.

15 **DIRECT EXAMINATION**

16 **BY MS. SMALLETS:**

17 **Q.** GOOD AFTERNOON, MR. BECK.

18 YOUR CURRENT EMPLOYER IS SHELL, CORRECT?

19 **A.** THAT'S CORRECT.

20 **Q.** AND YOU WORK AT THE MARTINEZ REFINERY?

21 **A.** I DO.

22 **Q.** YOU'VE WORKED THERE SINCE 1988, RIGHT?

23 **A.** CORRECT.

24 **Q.** AND YOUR CURRENT JOB TITLE IS PRODUCTION UNIT MANAGER FOR
25 OPCEN?

1 **A.** NO, IT'S NOT. IN JULY I CHANGED POSITIONS.

2 **Q.** WHAT IS YOUR CURRENT POSITION?

3 **A.** PRODUCTION EXCELLENT MANAGER.

4 **Q.** DURING 2016, YOU WERE THE PRODUCTION UNIT MANAGER FOR
5 OPCEN, CORRECT?

6 **A.** CORRECT.

7 **Q.** YOU HAD THAT JOB BEGINNING IN SEPTEMBER 2015?

8 **A.** CORRECT.

9 **Q.** DURING THE TIME PERIOD YOU WERE PRODUCTION UNIT MANAGER
10 FOR OPCEN, YOU WERE RESPONSIBLE FOR THE OPERATIONS OF ALL THE
11 UNITS WITHIN THE OPCEN DEPARTMENT, CORRECT?

12 **A.** CORRECT.

13 **Q.** AND YOU WERE RESPONSIBLE FOR ALL OF THE EMPLOYEES IN THE
14 OPCEN DEPARTMENT, CORRECT?

15 **A.** CORRECT.

16 **Q.** AND YOU WERE RESPONSIBLE FOR ALL OF THE PROJECTS IN THE
17 OPCEN DEPARTMENT?

18 **A.** CORRECT.

19 **Q.** AND YOU WERE RESPONSIBLE FOR THE TURNAROUND IN OPCEN?

20 **A.** CORRECT.

21 **Q.** YOU WERE RESPONSIBLE FOR THE CHANGES THAT WENT ON IN
22 OPCEN?

23 **A.** YES.

24 **Q.** WHEN IT CAME TO OPCEN, THE BUCK STOPS WITH YOU?

25 **A.** THAT'S CORRECT.

1 Q. AND YOU, DURING THE TIME YOU ARE THE PRODUCTION UNIT
2 MANAGER, YOU HAD THE AUTHORITY TO MAKE DECISIONS TO HIRE AND
3 FIRE, CORRECT?

4 A. THAT'S CORRECT. IT WAS SUBJECT TO APPROVAL FROM MY
5 MANAGER, BUT I WAS THE ONE THAT MADE THE RECOMMENDATIONS AND
6 FINAL DECISIONS IN OPCEN.

7 Q. AND YOUR MANAGER, DURING THAT TIME PERIOD, WAS THOR
8 NYGAARD, CORRECT?

9 A. THAT'S CORRECT.

10 Q. AND HE WAS THE -- WHAT WAS HIS JOB TITLE?

11 A. PRODUCTION MANAGER.

12 Q. AND WAS HE RESPONSIBLE FOR ALL OF THE PRODUCTION UNITS AT
13 THE MARTINEZ REFINERY?

14 A. ACTUALLY PRODUCTION UNITS AND MAINTENANCE.

15 Q. HOW MANY EMPLOYEES DID YOU HAVE REPORTING TO YOU IN OPCEN?

16 A. BETWEEN 60 TO 65.

17 Q. DO YOU KNOW HOW MANY EMPLOYEES WERE -- WAS THOR NYGAARD
18 RESPONSIBLE FOR?

19 A. I DON'T.

20 Q. WHO WAS MR. NYGAARD'S MANAGER?

21 A. THE GENERAL MANAGER.

22 Q. WHAT WAS -- DO YOU KNOW WHO HE -- WHAT THAT PERSON'S NAME
23 WAS DURING -- WHO WAS IN THAT POSITION DURING 2016?

24 A. I BELIEVE IT WAS PAUL GABBERT OR TOM RIZZO. I DON'T
25 REMEMBER WHEN THAT CHANGED.

1 Q. WHAT IS THE GENERAL MANAGER RESPONSIBLE FOR?

2 A. THE ENTIRE REFINERY.

3 Q. SO THAT'S THE HIGHEST RANKING PERSON AT THE SHELL MARTINEZ
4 REFINERY?

5 A. CORRECT.

6 Q. AND THEY ARE RESPONSIBLE FOR -- TO YOUR UNDERSTANDING,
7 THEY ARE RESPONSIBLE FOR ALL OF THE OPERATIONS OF THAT
8 REFINERY?

9 A. YES.

10 Q. DURING THE 2016 TIME PERIOD, ERIC PEREZ REPORTED TO YOU,
11 CORRECT?

12 A. CORRECT.

13 Q. AND HE WAS THE PRODUCTION -- WHAT WAS HIS TITLE?

14 A. HE WAS PRODUCTION SUPERVISOR FOR BOTH OPCEN, MY
15 DEPARTMENT, AND ANOTHER PRODUCTION UNIT CALLED DELAYED COKING.

16 Q. AND AS PRODUCTION SUPERVISOR, WAS PART OF MR. PEREZ'S JOB
17 DUTIES TO HANDLE PERSONNEL-RELATED ISSUES FOR THE OPCEN
18 DEPARTMENT, RIGHT?

19 A. MOST OF THEM. I HAD A FEW DIRECT REPORTS MYSELF, BUT THEN
20 EVERYONE ELSE ERIC MANAGED.

21 Q. AND IT WAS PART OF ERIC'S JOB DUTIES DURING THAT 2016 TIME
22 PERIOD TO DECIDE WHICH TEMPORARY SHIFT TEAM LEADS BECAME
23 PROMOTED TO PERMANENT SHIFT TEAM LEADS, CORRECT?

24 A. CORRECT.

25 Q. DURING THE TIME THAT -- THE ENTIRE TIME PERIOD YOU WORKED

1 IN OPCEN, YOU WERE AWARE OF ONLY FOUR WOMEN IN TOTAL WHO
2 WORKED AS OPERATORS IN THAT DEPARTMENT, CORRECT?

3 A. I BELIEVE THAT NUMBER IS RIGHT.

4 Q. AND ONE OF THOSE INCLUDES CIARA NEWTON, RIGHT?

5 A. CORRECT.

6 Q. AND DURING THE ENTIRE TIME YOU WERE THE PRODUCTION UNIT
7 MANAGER FOR OPCEN, YOU PARTICIPATED IN TWO TERMINATIONS,
8 CORRECT?

9 A. CORRECT.

10 Q. AND YOU WERE THE DECISION-MAKER FOR BOTH THOSE
11 TERMINATIONS?

12 A. CORRECT.

13 Q. AND ONE OF THEM WAS MS. NEWTON?

14 A. CORRECT.

15 Q. AND THE OTHER ONE WAS A MALE EMPLOYEE, CORRECT?

16 A. CORRECT.

17 Q. AND HE WAS TERMINATED; THE TERMINATING INCIDENT WAS CREDIT
18 CARD FRAUD, CORRECT?

19 A. CORRECT.

20 Q. YOU PARTICIPATED IN A ROUND-ROBIN STYLE DRAFT TO SELECT
21 WHICH EMPLOYEES OF THE 2016 NEW HIRE CLASS WERE -- WENT TO THE
22 OPCEN DEPARTMENT, CORRECT?

23 A. CORRECT.

24 Q. AND ERIC PEREZ PARTICIPATED AS WELL?

25 A. I BELIEVE HE WAS IN THE ROOM, YES.

1 Q. AND CIARA WAS OPCEN'S LAST SLOT CHOICE OF THE PEOPLE THAT
2 OPCEN SELECTED?

3 A. THAT'S CORRECT.

4 Q. AND WHEN YOU MADE THAT SELECTION, YOU KNEW THEY HAD THEIR
5 TEST SCORES, YOU HAD SOME TRAINING, YOU HAD THEIR WORK
6 HISTORY, AND YOU HAD TRAINER FEEDBACK, RIGHT?

7 A. CORRECT.

8 Q. YOU ALSO HAD COPIES OF THEIR PHOTOS, CORRECT?

9 A. CORRECT.

10 Q. PERFORMANCE REVIEWS FOR NEW HIRES ARE HANDLED BY THE SHIFT
11 TEAM LEADERS, RIGHT?

12 A. NOT OF ALL THEM. ONCE THEY'RE TRANSFERRED TO THE UNITS
13 THEY ARE.

14 Q. I AM SORRY.

15 SO ONCE THE NEW HIRES GET TRANSFERRED TO THE UNITS, THEIR
16 PERFORMANCE REVIEWS ARE HANDLED BY THE SHIFT TEAM LEADERS,
17 RIGHT?

18 A. CORRECT, ON THEIR TEAM.

19 Q. OKAY. AND THOSE PROGRESS REVIEWS -- THOSE PERFORMANCE
20 REVIEWS ARE USED -- REVIEWED BY ERIC PEREZ?

21 A. YES.

22 Q. WHEN WE'RE TALKING ABOUT PERFORMANCE REVIEWS, THAT'S THE
23 SAME THING AS THE PROGRESS REVIEWS, RIGHT?

24 A. CORRECT.

25 Q. YOU DIDN'T HAVE THE OPPORTUNITY TO PERSONALLY OBSERVE

1 MS. NEWTON'S JOB PERFORMANCE, CORRECT?

2 A. CORRECT.

3 Q. BUT YOU RELIED UPON INFORMATION THAT ERIC PEREZ PROVIDED
4 TO YOU, CORRECT?

5 A. CORRECT.

6 Q. YOU HAD MULTIPLE CONVERSATIONS WITH MR. PEREZ ABOUT
7 MS. NEWTON?

8 A. CORRECT.

9 Q. AND YOU ALSO RELIED UPON INFORMATION THAT MR. CURRAN
10 PROVIDED TO YOU, CORRECT?

11 A. CORRECT.

12 Q. AND YOU REVIEWED HER PD LOGS PRIOR TO HER TERMINATION?

13 A. CORRECT.

14 Q. AND YOU REVIEWED A PROGRESS REVIEW THAT RICHARD METCALF
15 HAD PREPARED, CORRECT?

16 A. CORRECT.

17 Q. THAT WAS THE PROGRESS REVIEW -- THE VERSION OF THE
18 PROGRESS REVIEW THAT YOU REVIEWED WAS THE VERSION THAT SAID
19 THAT SHE COULD CONTINUE -- SHOULD CONTINUE AS AN EMPLOYEE IN
20 OPCEN, RIGHT?

21 A. CORRECT.

22 Q. YOU... WITH RESPECT TO THE INCIDENTS ON MS. NEWTON'S PD
23 LOG, YOU THOUGHT THAT THE ISSUE WITH THE FX FLARE SYSTEM
24 SAMPLE BEING AN ALARM, THAT WAS JUST A MISTAKE, RIGHT?

25 A. THAT COULD BE SOMETHING FROM A, I WOULD CALL A NORMAL, OR

1 NOT AN UNUSUAL OCCURRENCE FOR SOMEONE IN HER POSITION AS FAR
2 AS A NEW HIRE.

3 Q. OKAY. YOU EXPECTED HER MANAGER TO COACH HER ON IT, RIGHT,
4 TRAIN HER ON IT?

5 A. CORRECT.

6 Q. YOU ALSO THOUGHT THE INCIDENT WITH RESPECT TO THE CPI
7 OUTLET -- INLET WAS JUST A TYPICAL MISTAKE A NEW HIRE WOULD
8 MAKE, RIGHT?

9 A. CORRECT.

10 Q. LET'S TALK ABOUT THE -- ON THE PD LOG THERE IS -- IT
11 REFERS TO COACHINGS AND THEN COUNSELINGS, AND THEN THERE'S
12 OTHER LEVELS; IS THAT RIGHT?

13 A. THAT'S CORRECT.

14 Q. SO THE LOWEST LEVEL IS A COACHING?

15 A. CORRECT.

16 Q. AND THEN A MORE SERIOUS SITUATION IS A COUNSELING?

17 A. COUNSELING IS THE NEXT STEP.

18 Q. AND AFTER THAT THEY GO TO AN ORAL REMINDER?

19 A. CORRECT.

20 Q. AND THEN THERE'S WRITTEN DISCIPLINE?

21 A. CORRECT.

22 Q. AND ON MS. NEWTON'S PD LOG, IT'S ALL COACHINGS BUT ONE
23 COUNSELING, RIGHT?

24 A. I WOULD HAVE TO LOOK TO BE SURE.

25 Q. ARE YOU AWARE IF SHE RECEIVED ANY ORAL REMINDERS?

1 **A.** I AM NOT SURE.

2 **Q.** OKAY. YOU WERE AWARE THAT A STICKER WAS BROUGHT INTO THE
3 REFINERY, CORRECT?

4 **A.** I AM.

5 **Q.** AND YOU UNDERSTOOD THAT YOUR RESPONSIBILITY -- YOU
6 UNDERSTOOD THAT STICKER WAS INAPPROPRIATE, RIGHT?

7 **A.** ABSOLUTELY.

8 **Q.** AND YOU THOUGHT --

9 **THE COURT:** DID SOMEONE'S PHONE JUST GO OFF? YOU
10 NEED TO HAVE THAT OFF.

11 (PAUSE IN THE PROCEEDINGS.)

12 **THE WITNESS:** SORRY, YOUR HONOR.

13 **THE COURT:** GO AHEAD.

14 **BY MS. SMALLETS:**

15 **Q.** YOU THOUGHT THAT STICKER WAS INAPPROPRIATE?

16 **A.** ABSOLUTELY.

17 **Q.** YOU THOUGHT AN INVESTIGATION SHOULD BE CONDUCTED, RIGHT?

18 **A.** YES.

19 **Q.** YOUR PERSONAL RESPONSIBILITY RELATING TO THOSE KINDS OF
20 INVESTIGATIONS ARE TO TAKE IT TO HR TO MAKE SURE IT IS
21 PROPERLY INVESTIGATED, RIGHT?

22 **A.** CORRECT.

23 **Q.** BY "HR", YOU MEAN CHRISTINE LAYNE?

24 **A.** YES. I TOOK -- BOTH ERIC AND I TALKED ABOUT IT AND MADE
25 SURE CHRISTINE WAS AWARE OF IT.

1 Q. OKAY. AND IT WAS YOUR EXPECTATION THAT HR WOULD CONDUCT
2 AN INVESTIGATION IN ORDER TO DETERMINE WHO BROUGHT THE STICKER
3 INTO THE REFINERY, RIGHT?

4 A. THEY TECHNICALLY LEAD THE INVESTIGATION AND SELECT WHO
5 SHOULD ACTUALLY DO THE QUESTIONING.

6 Q. BUT IT WAS YOUR EXPECTATION THAT AN INVESTIGATION WAS
7 GOING TO BE DONE, RIGHT?

8 A. CORRECT.

9 Q. BUT YOU DON'T KNOW IF ANYONE WAS EVER ASKED WHETHER THEY
10 BROUGHT THE STICKER INTO THE REFINERY?

11 A. I DON'T KNOW THE DETAILS OF THE INVESTIGATION.

12 Q. AS YOU SIT HERE RIGHT NOW, YOU ACTUALLY DON'T KNOW WHO
13 BROUGHT THE STICKER INTO THE REFINERY?

14 A. I DO NOT.

15 Q. YOU DON'T KNOW IF THAT PERSON WAS A MANAGER?

16 A. I DO NOT.

17 Q. THERE IS NO TIME CLOCK FOR OPCEN EMPLOYEES, RIGHT?

18 A. CAN YOU CLARIFY?

19 Q. SURE. IS THERE A TIME CLOCK WHERE OPCEN EMPLOYEES PUNCH
20 IN AND OUT?

21 A. NO, THERE'S NOT.

22 Q. LET'S TALK A LITTLE BIT ABOUT THE PARALLEL TRAINING
23 CHECKLIST -- PARALLEL TRAINING. LET'S TALK ABOUT PARALLEL
24 TRAINING.

25 DURING PARALLEL TRAINING, A NEW OPERATOR SPENDS SOME TIME

1 IN THE FIELD WITH SOMEONE WHO'S SHOWING THEM HOW TO DO THE
2 JOB, RIGHT?

3 A. WELL, THAT ACTUALLY OCCURS PRIOR TO THAT?

4 Q. BEFORE THEY BECOME A QUALIFIED OPERATOR.

5 A. SO IT HAPPENS BOTH, BUT THE PARALLEL TRAINING IS AFTER
6 THEY ARE QUALIFIED, BEFORE THEY CAN WORK THE UNIT ALONE, IT IS
7 BASICALLY A BUDDY SYSTEM. THEY DO THAT FOR A PERIOD OF TIME.
8 I BELIEVE IT WAS ABOUT A WEEK.

9 Q. ANY OPERATOR CAN DO PARALLEL TRAINING, RIGHT?

10 A. I AM NOT SURE WHAT OUR POLICY ACTUALLY SAYS ON THAT.

11 Q. OKAY.

12 AND CERTAINLY NO LATER THAN THE END OF JULY YOU WERE AWARE
13 THAT MS. NEWTON HAD REPORTED CONCERNS ABOUT BEING SINGLED OUT,
14 RIGHT?

15 A. ON ONE OCCASION.

16 Q. YOU ARE AWARE THAT SHE REPORTED CONCERNS ABOUT BEING
17 TREATED DIFFERENTLY, RIGHT?

18 A. ON THE TARDINESS.

19 Q. YOU WERE AWARE THAT SHE REPORTED THAT CONCERN ABOUT BEING
20 TREATED DIFFERENTLY THAN THE OTHER GUYS, RIGHT?

21 A. CORRECT.

22 Q. YOU RECEIVED AN EMAIL WHICH LISTED ALL THOSE CONCERNS,
23 RIGHT?

24 A. I'M NOT SURE WHICH EMAIL YOU ARE REFERRING TO.

25 Q. DO YOU RECALL RECEIVING AN EMAIL THAT LISTED THOSE

1 CONCERNS?

2 **A.** I REMEMBER THE ONE ABOUT THE TARDINESS.

3 **Q.** THERE WAS AN EMAIL THAT LISTED MS. NEWTON'S CONCERNS,
4 CORRECT?

5 **A.** I DON'T RECALL WHICH ONE YOU ARE TALKING ABOUT.

6 **Q.** OKAY.

7 THE TERMINATION DECISION HAD ALREADY BEEN MADE BY
8 SEPTEMBER 27 WHEN YOU MET WITH CHRISTINE LAYNE AND ERIC PEREZ
9 TO DISCUSS IT, CORRECT?

10 **A.** I'M NOT SURE OF THE DATES. WE TALKED A COUPLE OF TIMES
11 ABOUT THE DECISION IN GETTING TO THAT DECISION.

12 **Q.** OKAY. YOU... YOU'RE AWARE THAT PEOPLE OF -- OF PEOPLE
13 USING STEREOTYPICALLY HIGH PITCHED FEMALE VOICES ON THE RADIO,
14 RIGHT?

15 **A.** I'VE HEARD THAT BEFORE, YES.

16 **Q.** THAT'S NOT PEOPLE USING THEIR NATURAL VOICES, RIGHT?

17 **A.** CORRECT.

18 **Q.** YOUR CONCERN WITH THIS WAS THAT YOU THOUGHT IT WASN'T
19 PROPER RADIO ETIQUETTE, CORRECT?

20 **A.** THAT'S CORRECT.

21 **Q.** THE FIRST TIME YOU MET MS. NEWTON, HAD MORE THAN MAYBE
22 CASUALLY, WAS THAT MEETING WHERE SHE WAS TERMINATED, RIGHT?

23 **A.** I HAD MET HER SEVERAL TIMES FROM TIME TO TIME ON SHIFT AND
24 IN THE CONTROL CENTER.

25 **Q.** ANY OF THOSE INTERACTIONS LAST MORE THAN A COUPLE OF

1 MINUTES.

2 A. NO.

3 Q. AND DURING THE TERMINATION MEETING, MS. NEWTON ASKED YOU
4 WHY SHE WAS BEING TERMINATED, CORRECT?

5 A. CORRECT.

6 Q. YOU DIDN'T TELL HER, DID YOU?

7 A. WE DIDN'T GO INTO THE DETAILS.

8 MS. SMALLETS: I HAVE NOTHING FURTHER.

9 THE COURT: ANY EXAMINATION?

10 CROSS-EXAMINATION

11 BY MR. LAFAYETTE:

12 Q. MR. BECK, ARE YOU MARRIED?

13 A. YES, I AM.

14 Q. DO YOU HAVE CHILDREN?

15 A. YES, I DO.

16 Q. WHAT DO YOU HAVE?

17 A. I HAVE TWO BOYS.

18 Q. AND DID YOU GROW UP IN NORTHERN CALIFORNIA?

19 A. LAST 30 YEARS I'VE BEEN IN MARTINEZ.

20 Q. DID YOU GO TO COLLEGE?

21 A. I DID.

22 Q. TELL ME ABOUT YOUR EDUCATION.

23 A. I AM SORRY?

24 Q. TELL ME ABOUT YOUR EDUCATION.

25 A. I WENT TO THE UNIVERSITY OF NEVADA AT RENO AND GOT A

1 DEGREE IN CHEMICAL ENGINEERING.

2 Q. ALL RIGHT. AND HAVE YOU WORKED ANYPLACE OTHER THAN THE
3 MARTINEZ REFINERY?

4 A. NOT AFTER COLLEGE. I'VE BEEN THERE 30 YEARS.

5 Q. CAN YOU HIRE AND FIRE PEOPLE ON YOUR OWN WITHOUT TALKING
6 TO SOMEBODY ELSE?

7 A. NO.

8 Q. CAN YOU SET CORPORATE POLICY FOR EQUILON?

9 A. NO.

10 MS. SMALLETS: OBJECTION --

11 COURT REPORTER: I'M SORRY, I CAN'T HEAR YOU.

12 THE COURT: I'M GOING ALLOW THAT QUESTION, AND I WILL
13 EXPLAIN TO THE JURY THEIR ROLE WITH RESPECT TO THOSE TOPICS.
14 OVERRULED.

15 BY MR. LAFAYETTE:

16 Q. ARE YOU AN OFFICER IN EQUILON?

17 A. NO.

18 Q. ARE YOU A CORPORATE DIRECTOR AT EQUILON?

19 A. NO.

20 Q. ARE YOU AN OFFICER IN THE SHELL OIL COMPANY?

21 A. NO.

22 Q. ARE YOU A DIRECTOR IN THE SHELL OIL COMPANY?

23 A. NO.

24 Q. APPROXIMATELY HOW MANY EMPLOYEES ARE AT THE MARTINEZ
25 REFINERY?

1 **A.** BETWEEN 700 AND 730 MAYBE.

2 **Q.** OF THAT NUMBER, HOW MANY OF THEM DO YOU SUPERVISE OR UNDER
3 YOUR SUPERVISION?

4 **A.** DIRECT SUPERVISION AT THE TIME IN 2016 WAS SIX. IN THE
5 TOTAL DEPARTMENT BETWEEN 60 AND 65.

6 **Q.** THERE WAS A -- I HEARD IT REFERRED TO AS A ROUND-ROBIN
7 SELECTION FOR THE DEPARTMENT WHERE PEOPLE WENT.

8 WERE YOU PART OF THAT ROUND ROBIN?

9 **A.** I WAS.

10 **Q.** CAN YOU TELL ME WHAT IT MEANS TO HAVE A ROUND ROBIN? HOW
11 DOES IT WORK?

12 **A.** ESSENTIALLY ALL OF THE PRODUCTION UNIT MANAGERS WHO ARE
13 RECEIVING SOME OF THE NEW HIRES PICK IN ORDER, JUST LIKE YOU
14 WOULD PICK A TEAM, IF YOU WILL.

15 **Q.** OKAY. SO THEY ALL GOT TO PICK WHO THEY WANTED ONE AFTER
16 THE OTHER?

17 **A.** ONE AFTER THE OTHER THERE WAS AN ORDER.

18 **Q.** UNTIL IT WAS ALL DONE?

19 **A.** CORRECT.

20 **Q.** AND WERE THERE SOME WOMEN IN THAT ORDER?

21 **A.** YES.

22 **Q.** DO YOU KNOW IF ANY OF THE WOMEN WENT HIGH?

23 **A.** I BELIEVE THEY DID.

24 **Q.** AND WHERE DID MS. NEWTON FALL?

25 **A.** SHE WAS TOWARDS THE END.

1 Q. YOU WERE IN THE MEETING WHERE SHE WAS SEPARATED?

2 A. I WAS.

3 Q. WAS THERE -- WAS HER GENDER THE REASON WHY SHE WAS
4 TERMINATED?

5 A. NO.

6 MS. SMALLETS: OBJECTION, LEADING.

7 THE COURT: SUSTAINED. THE ANSWER IS STRICKEN. YOU
8 ASKED AN OPEN-ENDED QUESTION.

9 BY MR. LAFAYETTE:

10 Q. DO YOU KNOW THE REASONS WHY SHE WAS TERMINATED?

11 A. I DO.

12 Q. OF THOSE REASONS, WAS GENDER PART OF IT?

13 A. NO.

14 MR. LAFAYETTE: NO FURTHER QUESTIONS, YOUR HONOR.
15 RESERVE ON THIS WITNESS AS WELL.

16 THE COURT: ANY FOLLOW-UP WITH RESPECT TO THOSE
17 QUESTIONS?

18 MS. SMALLETS: YES.

19 I AM GOING TO GIVE YOU AN EXHIBIT TO LOOK AT, MR. BECK,
20 THAT WAS PREVIOUSLY ADMITTED INTO EVIDENCE.

21 IT IS EXHIBIT 33, YOUR HONOR.

22 THE COURT: OKAY.

23 I DON'T SHOW 33 AS ADMITTED.

24 MS. SMALLETS: I'M SORRY.

25 THE COURT: YOU CAN HAND IT TO HIM.

1 DO YOU SHOW IT?

2 (EXHIBIT HANDED TO WITNESS.)

3 **THE CLERK:** NO. NOT ADMITTED.

4 **REDIRECT EXAMINATION**

5 **BY MS. SMALLETS:**

6 **Q.** TAKE A LOOK AT THIS DOCUMENT, MR. BECK. IS THIS AN EMAIL
7 THAT YOU RECEIVED --

8 **THE COURT:** HOLD ON. DID YOU GIVE A COPY TO
9 MR. LAFAYETTE?

10 **MS. SMALLETS:** IT IS EXHIBIT 33 IN THE --

11 **THE COURT:** IF YOU DID NOT, I NEED TO MAKE SURE HE --
12 DO YOU HAVE IT UP?

13 **MR. LAFAYETTE:** I HAVE WHAT I THINK IS EXHIBIT 33,
14 BUT I WOULD LIKE TO SEE IT TO MAKE SURE.

15 **THE COURT:** YOU NEED TO SHOW IT TO HIM.

16 (COUNSEL CONFER.)

17 **THE COURT:** GO AHEAD.

18 **BY MS. SMALLETS:**

19 **Q.** AND THIS IS -- YOU RECOGNIZE THIS EMAIL, MR. BECK?

20 **A.** I DO.

21 **Q.** AND THIS IS AN EMAIL YOU RECEIVED ON JULY 28TH, 2016?

22 **MR. LAFAYETTE:** THIS IS OUTSIDE THE SCOPE OF MY
23 CROSS.

24 **THE COURT:** OVERRULED. GO AHEAD.

1 **BY MS. SMALLETS:**

2 **Q.** TAKE A LOOK AT THE LAST PAGE.

3 **A.** CAN YOU GIVE ME THE BATES NUMBER?

4 **Q.** SURE. IT'S BATES NUMBER -- IT SHOULD SAY DEFENDANT 1010
5 AT THE BOTTOM.

6 **A.** THANK YOU.

7 **Q.** AND IT'S A DOCUMENT STATEMENT FROM CIARA, CORRECT?

8 **A.** YES. I SEE THAT.

9 **Q.** SO AS OF THE DATE OF THIS EMAIL, YOU WERE AWARE THAT
10 MS. NEWTON WAS REPORTING THAT STL'S PICK AND CHOOSE WHICH
11 INCIDENTS TO REPORT AND INVESTIGATE, CORRECT?

12 **A.** CAN YOU TELL ME WHICH BULLET YOU ARE TALKING ABOUT?

13 **Q.** THE SECOND BULLET POINT.

14 **A.** I SEE THAT SHE MADE THAT -- OR ERIC REPORTED THAT SHE'S
15 MAKING THAT STATEMENT.

16 **Q.** AND ERIC REPORTED TO YOU THAT MS. NEWTON WAS RAISING
17 CONCERNS THAT TRAPS WERE BEING SET FOR HER, CORRECT?

18 THAT'S THE FOURTH BULLET POINT.

19 **A.** I SEE THAT IT SAYS THAT IN HERE.

20 **Q.** ERIC NEWTON (SIC) TOLD YOU THAT MS. NEWTON WAS REPORTING
21 CONCERNS THAT IT ISN'T FAIR FOR HER TO GET IN TROUBLE FOR
22 REPORTING WHEN OTHER PEOPLE HAVE INCIDENTS THAT DON'T GET
23 REPORTED; THAT'S THE FIRST BULLET POINT, RIGHT?

24 **MR. LAFAYETTE:** THAT'S OUTSIDE THE COURSE OF MY --

25 **THE COURT:** AT THIS POINT IT IS. SUSTAINED.

1 **BY MS. SMALLETS:**

2 **Q.** AND MS. NEWTON -- YOU ARE AWARE THAT MS. NEWTON REPORTED
3 TO YOU THAT SHE IS NOT BEING TREATED THE SAME AS THE OTHER
4 GUYS?

5 **A.** AGAIN, THIS WAS REPORTED TO ERIC, NOT CORRECTLY TO ME AND
6 I WAS CC'D ON THIS. SO I DID RECEIVE THIS EMAIL.

7 **Q.** AND YOU READ IT AT THE TIME?

8 **A.** I AM NOT SURE IF I READ IT AS COMPLETELY AS YOU'RE
9 INFERRING.

10 **Q.** YOU DON'T DENY RECEIVING THIS EMAIL?

11 **A.** I DON'T. IT SAYS I RECEIVED IT.

12 **MS. SMALLETS:** NOTHING FURTHER.

13 **THE COURT:** ANYTHING ON THE EMAIL?

14 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
15 INTO EVIDENCE, YOUR HONOR, SINCE IT WAS USED.

16 **MS. SMALLETS:** WE ARE NOT MOVING --

17 **THE COURT:** I CAN'T HEAR YOU.

18 **MS. SMALLETS:** I'M SORRY. WE ARE NOT REQUESTING THAT
19 IT BE ADMITTED.

20 **THE COURT:** I KNOW. HE'S ASKING. YOU USED IT. IS
21 THERE AN OBJECTION?

22 **MS. SMALLETS:** IT HAS HEARSAY WITHIN IT. IT'S THE
23 SAME ISSUE WE HAVE BEEN TALKING ABOUT.

24 **THE COURT:** THE FIRST AND THE LAST PAGE ARE ADMITTED.

25 PAGE 106 SHOWING THAT HE'S CC'D AND 110. WE CAN TALK

1 ABOUT THE BALANCE LATER.

2 (PLAINTIFF'S EXHIBIT 33 (PGS. 106 & 110) RECEIVED IN
3 EVIDENCE)

4 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR. I HAVE NO
5 QUESTIONS AT THIS TIME, BUT I RESERVE FOR THE WITNESS.

6 **THE COURT:** ALL RIGHT. YOU CAN STEP DOWN. THANK
7 YOU.

8 NEXT WITNESS.

9 **MS. NUGENT:** YOUR HONOR, WE HAVE NO MORE WITNESSES
10 FOR TODAY BECAUSE WE HAVE GONE SO RAPIDLY. SO WE HAVE NO ONE
11 TO CALL. WE HAVE TWO WITNESSES TOMORROW AND PLAINTIFF WILL
12 REST.

13 **THE COURT:** OKAY.

14 LADIES AND GENTLEMEN, THEN THAT CONCLUDES THE EVIDENTIARY
15 PORTION FOR TODAY. JUST LOOKING FORWARD, SO BEGINNING ON
16 MONDAY, PLAN ON BEING HERE ALL DAY. WE WILL PROVIDE YOU LUNCH
17 ON MONDAY.

18 THE SCHEDULE WILL BE A LITTLE BIT OFF. WE'LL KIND OF PLAY
19 IT BY EAR IN TERMS OF WHAT IS GOING TO HAPPEN WHEN SO YOU WILL
20 HAVE TO BE FLEXIBLE ON MONDAY. BUT I JUST WANT YOU TO MAKE
21 SURE TO PLAN ON THAT. SO BEGINNING MONDAY, IT WILL BE ALL
22 DAY.

23 **JUROR:** WHAT TIME DO WE HAVE TO BE HERE ON MONDAY?

24 **THE COURT:** HERE AT THE SAME TIME. WE'LL START AT
25 8:30, BUT WE WILL GO ALL DAY LONG. OKAY? WE WON'T STOP EARLY

1 AT 1:30 FOR YOU.

2 OKAY? WE WILL GO ALL DAY.

3 **JUROR:** UNTIL 4:30?

4 **THE COURT:** THEY CLOSE THE BUILDING AT 4:30, RIGHT?

5 **THE CLERK:** 5:00.

6 **THE COURT:** ALL RIGHT. SO CERTAINLY UNTIL 4:00. YOU
7 HAVE THE -- ONCE YOU ARE DELIBERATING, YOU HAVE THE OPTION TO
8 GO TILL 5:00. THAT'S WHEN THEY CLOSE THE BUILDING. IF YOU
9 ARE RIGHT ON THE VERGE, I COULD AUTHORIZE OVERTIME BUT THEY
10 GET REALLY MAD WHEN I DO THAT. BUT IT'S OKAY. WE WILL SEE
11 HOW YOU DO.

12 ANY OTHER QUESTIONS? ALL RIGHT. WE WILL SEE YOU TOMORROW
13 AT 8:30.

14 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

15 **THE COURT:** ALL RIGHT. WE HAVE THINGS TO TALK ABOUT
16 HERE.

17 I'M GOING TO NEED EXHIBIT 116A. THAT IS WHAT HAS BEEN
18 ADMITTED. I'M TRYING TO REMEMBER WHICH ONE THAT WAS.

19 THESE WERE THE CHEMICAL SHEETS. SO I NEED -- I'M GOING TO
20 NEED THE FIRST TWO PAGES AS 116A.

21 207, IS THERE -- THAT'S HIS DRAWING. ARE YOU MOVING 207
22 IN?

23 **MS. NUGENT:** YES, IF THERE'S NO OBJECTION.

24 **MR. LAFAYETTE:** MOVE IT IN. I'M FINE.

25 **THE COURT:** 207 IS ADMITTED.

1 (PLAINTIFF'S EXHIBIT 207 RECEIVED IN EVIDENCE)

2 **THE COURT:** AND THEN I HAVE 177. THIS IS THE CBA. I
3 DON'T TYPICALLY ADMIT DOCUMENTS THAT AREN'T USED. YOU DIDN'T
4 USE IT. YOU JUST HAD HIM AUTHENTICATE IT.

5 **MR. LAFAYETTE:** I DID, YOUR HONOR, BECAUSE I INTEND
6 TO USE THE PASSAGES IN IT THAT TALK ABOUT HOW -- IF YOU WANT
7 ME TO IDENTIFY THE SPECIFIC PAGES, I COULD, BUT I'M TRYING NOT
8 TO WASTE MY TIME WITH ASKING THEM STUFF THAT I DON'T NEED --

9 **THE COURT:** THE JURY -- YOU CAN'T ARGUE STUFF THE
10 JURY DOESN'T HAVE IN FRONT OF THEM.

11 **MR. LAFAYETTE:** THEN I WILL ASK SOME OTHER WITNESSES
12 OTHER THAN MR. RAY JONES. THERE'S A SECTION ABOUT WHAT YOU
13 ARE SUPPOSED TO DO IF YOU ARE OPERATING AND YOU'RE FATIGUED.
14 THERE'S A SECTION WHAT YOU ARE SUPPOSED TO DO IF YOU THINK
15 YOU'VE GOT AN ISSUE TO TAKE IT TO YOUR UNION.

16 THOSE ARE THE SECTIONS THAT I WOULD BE USING WITH HIM.

17 **THE COURT:** ALL RIGHT. WELL, I'LL MAINTAIN MY
18 RESERVATION ON IT, AND WE'LL SEE HOW YOU USE IT AND WHETHER
19 IT'S RELEVANT. BUT LIKE I SAY, HE'S AUTHENTICATED IT. ALL
20 RIGHT. SO I'LL RESERVE ON THAT.

21 AND THEN THIS LAST ONE, NO. 9... OH, NO, THAT'S NOT NO. 9.

22 **THE CLERK:** 33.

23 **THE COURT:** 33.

24 YOU WANT TO ARGUE FOR ANYTHING OTHER THAN THE TWO PAGES I
25 ADMITTED?

1 **MR. LAFAYETTE:** YES, YOUR HONOR. 33, IF I THINK I
2 HAVE IT RIGHT.

3 **THE COURT:** THAT'S THE EMAIL THAT HE WAS CC'D ON.

4 **MR. LAFAYETTE:** YES. I DON'T SEE ANY REASON TO
5 OBJECT TO THE BALANCE OF IT. WHAT WE ARE ASKING HIM ABOUT IS,
6 FIRST OF ALL, TO REFRESH HIS RECOLLECTION ON WHAT HE GOT. THE
7 REST OF THIS DOCUMENT IS -- AND I THINK WE ARE PLAYING WITH A
8 GAME HERE --

9 **THE COURT:** I UNDERSTAND, BUT GO AHEAD.

10 **MR. LAFAYETTE:** THIS IS ERIC PEREZ'S EMAIL. THIS
11 SUMMARIZES HIS FINDINGS AND WHAT HE SAID.

12 AND HE SPECIFICALLY SAID ON THIS DAY THAT WE KEEP TALKING
13 ABOUT, THIS 7TH DAY, HE PUTS THERE IN THAT DOCUMENT THAT IT'S
14 A TYPO. AND HE PUTS THE CORRECT DATE IN THIS DOCUMENT.

15 AND SO THAT'S WHY THIS DOCUMENT IS IN. THEY'VE REFERENCED
16 IT TO REFRESH HIS RECOLLECTION ABOUT THESE EVENTS, AND THAT
17 DOESN'T MEAN YOU ONLY GET ONE PART. I BELIEVE THAT IT MEANS
18 YOU GET THE ENTIRE --

19 **THE COURT:** I THINK BOTH SIDES ARE PLAYING GAMES.
20 YOU ARE GOING TO LAY THE FOUNDATION FOR THE REST OF THIS
21 DOCUMENT. IT WILL COME IN AT THAT POINT.

22 **MR. LAFAYETTE:** THAT'S FINE, YOUR HONOR.

23 **THE COURT:** AT THIS POINT, BOTH PAGES. YOU CAN'T
24 HAVE THE GATE LOGS AND NOT HAVE THE GATE LOGS. THE GATE STUFF
25 IS COMING IN AS SOON AS THEY LAY THE FOUNDATION.

1 ALL RIGHT.

2 MS. SMALLETS: YOUR HONOR, I DON'T BELIEVE WE
3 RECEIVED A WITNESS LIST FOR TOMORROW FROM THE DEFENDANT.

4 THE COURT: ALL RIGHT. WHO IS GOING TO BE ON FOR
5 TOMORROW?

6 MR. LAFAYETTE: THIS IS THE FIRST I'VE HEARD THAT
7 THEY REST.

8 THE COURT: THAT IS NOT TRUE BECAUSE I'VE HEARD IT.
9 WE HAVE DONE THIS NOW -- THEY SAID THIS TWO DAYS AGO.

10 MR. LAFAYETTE: WE HAVE MR. BECK, WE HAVE
11 MR. FISCHER, WE HAVE MR. PEREZ, WE HAVE PATRICK NEUMAN.

12 THE COURT: YOU ARE GOING TO DO ALL FOUR TOMORROW?

13 MR. LAFAYETTE: YES, MA'AM.

14 THE COURT: ALL RIGHT. SO WE WILL HAVE BECK BACK,
15 FISCHER BACK, PEREZ BACK, AND NEUMAN FOR THE FIRST TIME.

16 MR. LAFAYETTE: AND LORI MARTINELLI.

17 MS. SMALLETS: CAN WE HAVE THE ORDER OF THE
18 WITNESSES?

19 THE COURT: THAT'S THE ORDER UNLESS I HEAR OTHERWISE.
20 IS THAT THE -- I ASSUMED THAT WAS THE ORDER.

21 MR. LAFAYETTE: I DO, YOUR HONOR. I CAN'T -- LET ME
22 FIND MY NOTES.

23 THE COURT: FIND THEM QUICKLY BECAUSE YOU ARE ALREADY
24 LATE.

25 MR. LAFAYETTE: JEFF FISCHER, PATRICK NEUMAN, CAMERON

1 CURRAN, MR. METCALF, MIKE BECK, LORI MARTINELLI.

2 THE COURT: FIRST, FISCHER, SECOND, NEUMAN, THIRD
3 CURRAN, WHICH IS DIFFERENT, AND THEN WHO'S FOURTH?

4 MR. LAFAYETTE: RICHARD METCALF.

5 THE COURT: METCALF IS FOURTH?

6 MR. LAFAYETTE: YES.

7 MIKE BECK.

8 THE COURT: BECK IS FIFTH.

9 MR. LAFAYETTE: LORI MARTINELLI.

10 THE COURT: SO NOT PEREZ TOMORROW?

11 MR. LAFAYETTE: NO. THERE COULD BE SOME SHIFTING OF
12 MARTINELLI BECAUSE SHE IS GOING TO BE FLYING BACK TO HOUSTON.

13 THEN FOR THE BALANCE, YOUR HONOR, JUST TO ROUND IT OUT, IT
14 WILL BE DEANNA MARTINEZ, TOM RIZZO, AND MR. PEREZ. THAT'S THE
15 ORDER IN WHICH WE INTEND TO CALL WITNESSES.

16 THE COURT: MARTINEZ, RIZZO --

17 MR. LAFAYETTE: PEREZ.

18 BEFORE --

19 THE CLERK: CAN YOU TALK INTO THE MIC?

20 MR. LAFAYETTE: BEFORE PEREZ, I CAN'T REMEMBER HIS
21 NAME --

22 MS. LYONS: KULDEEP.

23 MR. LAFAYETTE: KULDEEP KAUR.

24 THE COURT: HOW DO YOU SPELL THAT?

25 MS. NUGENT: K-A-U-R.

1 **THE COURT:** HOLD ON JUST A MINUTE.

2 (PAUSE IN THE PROCEEDINGS.)

3 **THE COURT:** ALL RIGHT.

4 **MS. NUGENT:** I WANTED TO REMIND THE COURT THAT FIRST
5 TOMORROW WE'LL HAVE JOSE NAVARRO AND RICHARD METCALF.

6 **THE COURT:** YES, I HAVE THEM ON THE LIST.

7 **MS. NUGENT:** OKAY.

8 **THE COURT:** AND I TAKE IT THAT THAT'S NOT GOING TO
9 TAKE VERY LONG.

10 **MS. NUGENT:** NO, ABSOLUTELY NOT. I THINK MR. NAVARRO
11 15, 20 MINUTES TOPS FOR HIM. AND THEN MR. METCALF MAY TAKE 45
12 I THINK ALTOGETHER. OBVIOUSLY HE'S COMING BACK LATER IN THE
13 AFTERNOON.

14 **THE COURT:** SO MOST OF THESE PEOPLE ARE GOING TO
15 GO -- WE WILL HAVE A SIGNIFICANT PORTION TOMORROW. TOTAL
16 TRIAL TIME LEFT BETWEEN BOTH PARTIES IS ABOUT EIGHT AND A HALF
17 HOURS.

18 ALL RIGHT. I WILL SEE YOU BACK HERE AT 3:30. WE WILL
19 STAND IN RECESS UNTIL THAT TIME.

20 **MS. SMALLETS:** THANK YOU, YOUR HONOR.

21 (RECESS TAKEN AT 1:25 P.M.; RESUMED AT 3:30 P.M.)

22 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

23 **THE COURT:** ALL RIGHT. WE ARE BACK ON THE RECORD.
24 YOU WERE JUST GIVEN A NEW SET OF VERDICT FORMS WHICH WE WILL
25 GET TO AT THE END.

1 LET'S GO STRAIGHT TO THE SUBSTANTIVE INSTRUCTIONS. SO
2 THESE WERE EMAILED TO YOU. IT IS THE SET THAT STARTS WITH THE
3 WORD AT THE TOP "INTRODUCTION".

4 PLAINTIFF CIARA NEWTON BRINGS FIVE CLAIMS AGAINST
5 DEFENDANT EQUILON ENTERPRISES, LLC DOING BUSINESS AS SHELL OIL
6 PRODUCTS U.S.

7 ANY COMMENTS ON PAGE 1?

8 **MS. SMALLETS:** NO, YOUR HONOR.

9 THE ONLY COMMENT I WOULD MAKE IS THAT I THINK THE
10 DESCRIPTION ON PAGE 1 OF THE WHISTLEBLOWER RETALIATION CLAIM
11 IS ACTUALLY -- WOULD BE -- I WOULD PREFER THAT THAT BE USED IN
12 THE INTRODUCTION BECAUSE THAT'S ACTUALLY A VERY CLEAR
13 DESCRIPTION OF IT, BUT THAT'S NOT REALLY AN OBJECTION TO
14 PAGE 1.

15 **THE COURT:** ANYTHING FROM YOU, MR. LAFAYETTE?

16 **MR. LAFAYETTE:** PAGE 1?

17 **THE COURT:** PAGE 1.

18 **MR. LAFAYETTE:** NO, YOUR HONOR, I DON'T HAVE ANY
19 ISSUES WITH PAGE 1.

20 **THE COURT:** ALL RIGHT.

21 PAGE 2 IS THE FIRST START. THIS IS THE LONGEST OF THE
22 INSTRUCTIONS. FIRST CLAIM HARASSMENT BASED ON GENDER.

23 ANY COMMENTS?

24 **MR. LAFAYETTE:** I HAVE A COMMENT, YOUR HONOR, ON THE
25 PASSAGE WHERE IT SAYS HALFWAY DOWN THE FIRST PAGE: "HARASSING

1 CONDUCT", THERE'S A BULLET C, "OTHER HOSTILE OR ABUSIVE SOCIAL
2 INTERACTIONS."

3 I DON'T THINK THAT'S PART OF THE CACI INSTRUCTION AND I
4 THINK IT'S TOO VAGUE FOR THE JURY TO... I JUST HAVE AN ISSUE
5 WITH THAT SECTION.

6 **THE COURT:** ALL RIGHT. IT'S NOTED. IT'S GOING TO BE
7 IN THERE.

8 I THINK, AS I'M LOOKING AT THIS, ON ELEMENT 6, I THINK I'M
9 GOING TO ADD THE WORD "THAT" -- HOLD ON JUST A MINUTE -- TO
10 MAKE IT CLEAR. SO THAT A SUPERVISOR ENGAGED IN THE HARASSING
11 CONDUCT OR THAT A SUPERVISING AGENT -- SUPERVISOR OR AGENT
12 JUST SO THEY UNDERSTAND --

13 **MR. LAFAYETTE:** THAT'S FINE.

14 **THE COURT:** -- THERE'S THAT DISTINCTION. I'M GOING
15 TO ADD THAT WORD.

16 PAGE 3, ANY COMMENTS?

17 **MR. LAFAYETTE:** NO, YOUR HONOR.

18 **MS. SMALLETS:** NO, YOUR HONOR.

19 **THE COURT:** I CAN'T HEAR YOU, MS. SMALLETS. I'M
20 GOING DEAF SO YOU NEED TO SPEAK UP.

21 **MS. SMALLETS:** NO, YOUR HONOR.

22 **THE COURT:** THANK YOU.

23 ALL RIGHT. PAGE 4, ANY COMMENTS?

24 **MR. LAFAYETTE:** NO, YOUR HONOR.

25 **MS. SMALLETS:** YES, YOUR HONOR.

1 **THE COURT:** OKAY.

2 **MS. SMALLETS:** SO OUR CONCERN WITH THE DESCRIPTION OF
3 THE TIMELINESS OF THE CHARGE IS THAT IT CREATES THE
4 IMPLICATION THAT SHELL -- THAT WE ARE NOT SEEKING -- THAT
5 SHELL IS NOT THE DEFENDANT, THAT JEFF FISCHER IS. AND THERE'S
6 CONDUCT BY JEFF FISCHER THAT IS ALLEGED TO BE AFTER
7 MAY 24TH -- MAY 23RD, 2016. THE INCIDENT WITH THE PARALLEL
8 TRAINING CHECKLIST WHITEOUTS WAS CLEARLY TESTIFIED TO BE
9 MAY 27TH. THERE'S CONDUCT THAT OTHER PEOPLE ENGAGED IN THAT
10 TOOK PLACE BEFORE THEN, WHICH WOULD BE, AMONG OTHER THINGS,
11 THE FAIRY DUST, WHICH WE ARE NOT ALLEGING MR. FISCHER DID, WE
12 ARE ALLEGING SOMEBODY DID, BUT MR. FISCHER, AS A SUPERVISOR,
13 KNEW ABOUT IT AND COULD HAVE ADDRESSED IT --

14 **THE COURT:** I UNDERSTAND THAT'S YOUR ARGUMENT. SO
15 WHAT IS -- BUT THE DEFENDANT ALSO HAS AN ARGUMENT, AND I HAVE
16 TO ADDRESS BOTH.

17 **MS. SMALLETS:** SO I HAVE A PROPOSED LANGUAGE.

18 **THE COURT:** ALL RIGHT.

19 **MS. SMALLETS:** SO IN THE PARAGRAPH AFTER, "CIARA
20 NEWTON FILED HER CHARGE WITH THE DFEH," THE NEXT PARAGRAPH, I
21 THINK THAT SHOULD READ, DEFENDANT ARGUES THAT HARASSING
22 CONDUCT THAT OCCURRED EARLIER THAN MAY 23RD, 2016 CANNOT BE
23 CONSIDERED.

24 AND THEN THEY CAN ARGUE -- AND THEN WE HAVE THE CONTINUING
25 VIOLATION DEFINITION, AND THEY CAN CERTAINLY MAKE THE ARGUMENT

1 TO THE JURY THAT MOST OF THE HARASSMENT BEFORE WAS JEFF AND
2 MOST WAS AFTER.

3 **THE COURT:** SO YOUR SUGGESTION... WHAT FOLLOWS YOUR
4 SUGGESTION?

5 **MS. SMALLETS:** I THINK THAT IF THAT --

6 **THE COURT:** ARE YOU ASKING ME TO STRIKE EVERYTHING ON
7 THAT PAGE?

8 **MS. SMALLETS:** NO, NO, NO. I'M SORRY. I THINK THAT
9 IF THAT PARAGRAPH IS STRICKEN AND REPLACED WITH WHAT I SAID, I
10 THINK THAT THAT WOULD DO IT.

11 **THE COURT:** ALL RIGHT. SO GIVE ME YOUR PARAGRAPH.

12 **MS. SMALLETS:** I THINK IF THAT PARAGRAPH SAID,
13 DEFENDANT ARGUES THAT HARASSING CONDUCT --

14 **THE COURT:** HOLD ON.

15 (PAUSE IN THE PROCEEDINGS.)

16 **THE COURT:** OKAY. KEEP GOING.

17 **MS. SMALLETS:** THAT OCCURRED EARLIER THAN MAY 23RD,
18 2016 CANNOT BE CONSIDERED.

19 **MR. LAFAYETTE:** I THINK IT'S MISSING SOMETHING.

20 **THE COURT:** WHAT?

21 **MR. LAFAYETTE:** IN THAT PARAGRAPH IT GOES ON TO SAY,
22 "AND THEREFORE CIARA NEWTON'S CHARGE WAS FILED" -- THERE'S NO
23 LONGER A REFERENCE TO THE CHARGE.

24 **THE COURT:** ALL RIGHT.

25 **MR. LAFAYETTE:** AND I THINK BECAUSE THE CHARGE IS

1 WHAT WE ARE SAYING IS THE TRIGGERING EVENT, IT'S JUST SORT OF
2 A STATEMENT THAT WE CONTEND THAT IT'S NOT, BUT THAT CONTENTION
3 IS BASED UPON THE AGENCY CHARGE.

4 SO I JUST THINK SOMEHOW WE NEED TO REFERENCE THAT. THAT'S
5 ALL I'M SAYING. I AM NOT SAYING HOW YET, JUST TO REFERENCE
6 IT.

7 **MS. SMALLETS:** IF WHAT MR. LAFAYETTE IS PROPOSING
8 THAT CONDUCT THAT OCCURRED EARLIER THAN THE -- THAN MAY -- IF
9 WHAT HE'S JUST SAYING IS HE WANTS THE REFERENCE TO THE DATE OF
10 THE CHARGE IN THAT PARAGRAPH, I DON'T HAVE A PROBLEM WITH
11 THAT. I AM NOT SURE HOW THE LANGUAGE WOULD READ.

12 **THE COURT:** WELL, WHAT IS WRONG WITH THE FINAL CLAUSE
13 THAT SAYS YOUR LANGUAGE, DEFENDANT ARGUES THAT THE HARASSING
14 CONDUCT THAT OCCURRED EARLIER THAN MAY 23RD, 2016 CANNOT BE
15 CONSIDERED, AND THEREFORE THAT CIARA NEWTON'S CHARGE WAS FILED
16 MORE THAN A YEAR AFTER THE DEADLINE.

17 THAT'S THE POINT OF THE ARGUMENT.

18 **MS. SMALLETS:** SO THE ISSUE, FROM MY MIND, IS THEY
19 ARE NOT ARGUING THAT WE CANNOT PURSUE A HARASSMENT CLAIM.
20 EVERYONE WOULD CONCEDE THAT THERE IS SOME CONDUCT THAT FALLS
21 WITHIN THE STATUTORY PERIOD.

22 WHAT THEY ARE SAYING IS THAT HARASSMENT CLAIM NEEDS TO BE
23 TRUNCATED TO ONLY INCLUDE A PORTION OF THE CONDUCT.

24 **THE COURT:** I UNDERSTOOD IT TO BE THAT THE -- I MEAN,
25 THE WAY I WROTE THIS WAS THAT THEY WERE CHALLENGING THE ENTIRE

1 CLAIM ITSELF. THERE IS NO OTHER -- THERE'S NO POINT TO HAVING
2 A TIMELY-FILED COMPLAINT -- I MEAN, THIS IS AN INSTRUCTION ON
3 WHETHER OR NOT -- WELL, OKAY.

4 **MS. SMALLETS:** I THINK THE PROBLEM WITH THAT, YOUR
5 HONOR, IS I DON'T THINK THERE'S ANY DISPUTE OR ANY WITNESS WHO
6 HAS TESTIFIED THAT THERE WAS NO HARASSING CONDUCT IN THE
7 STATUTORY PERIOD. THERE'S A QUESTION ABOUT SEVERITY OR
8 PERSUASIVENESS, BUT THERE WAS -- IT'S UNDISPUTED THAT THERE
9 WAS AN ACT OF HARASSMENT WITHIN THE STATUTORY PERIOD, THE
10 STICKER.

11 **MR. LAFAYETTE:** I THINK I HAVE A SOLUTION, YOUR
12 HONOR, IF I CAN PUT IT OUT THERE.

13 IF WE TAKE THE LANGUAGE THAT IS PROPOSED WHERE IT SAYS,
14 "DEFENDANT ARGUES THAT CONDUCT THAT OCCURRED PRIOR TO
15 MAY 23RD" --

16 (SIMULTANEOUS COLLOQUY.)

17 **THE COURT:** LET ME DO THIS. LET ME SUGGEST
18 SOMETHING.

19 THIS SAYS A CHARGE IS TIMELY -- TELLING THE JURY, A CHARGE
20 IS TIMELY FILED IF IT WAS FILED BY THE DEADLINE, THAT IS,
21 WITHIN ONE YEAR OF THE DATE ON WHICH THE CONDUCT OCCURRED THAT
22 CIARA NEWTON CONTENDS WAS HARASSING CONDUCT.

23 HERE, CIARA NEWTON -- OR HERE, THE PARTIES AGREE THAT
24 CIARA NEWTON FILED HER CHARGE WITH THE DFEH ON MAY 24TH, 2017.
25 ACCORDINGLY -- OR NOT ACCORDINGLY, BECAUSE OF THAT FILING

1 DATE, DEFENDANT ARGUES THAT HARASSING CONDUCT THAT OCCURRED
2 EARLIER THAN MAY 23RD, 2016 CANNOT BE CONSIDERED. PLAINTIFF
3 DISAGREES.

4 AND THEN WE CAN ARGUE -- WE CAN -- I CAN INSTRUCT THEM WHY
5 YOU DISAGREE, WHICH IS THE NEXT PARAGRAPH.

6 **MR. LAFAYETTE:** WHICH IS THE NEXT PARAGRAPH.

7 **THE COURT:** WHICH SAYS, CIARA NEWTON ARGUES THAT...
8 HOW ABOUT, THAT THE HARASSING CONDUCT BEFORE MAY 23RD WAS A
9 CONTINUING VIOLATION, AND THEN EXPLAINS WHAT A CONTINUING
10 VIOLATION IS.

11 AND THEN... AND THEN RATHER THAN THE LAST TWO PARAGRAPHS,
12 I WOULD JUST SAY, YOU MAY ONLY CONSIDER THE EVIDENCE BEFORE
13 MAY 23RD IF YOU FIND THAT IT WAS A CONTINUING VIOLATION.

14 **MR. LAFAYETTE:** I THINK THAT'S RIGHT.

15 **MS. SMALLETS:** SO I THINK THAT IS RIGHT IF IT'S
16 LIMITED TO THIS CAUSE OF ACTION, BECAUSE THEY COULD CERTAINLY
17 CONSIDER IT FOR THE OTHER CAUSE OF ACTION.

18 **THE COURT:** OKAY. AND I CAN SAY THAT -- IT ONLY
19 COMES IN HERE BUT I CAN MAKE IT MORE CLEAR. SO THE VERY
20 OPENING PARAGRAPH -- SEE, THERE I SAY IT CANNOT PROCEED, BUT
21 THAT'S NOT QUITE RIGHT.

22 **MS. SMALLETS:** NO. BECAUSE, IN FACT, WE CAN
23 ACTUALLY --

24 **THE COURT:** SO WHAT IF I JUST SAY, WITH RESPECT TO
25 THIS COUNT ONLY. THE PARTIES DISAGREE ABOUT SOME OF THE

1 EVIDENCE WHICH CAN BE CONSIDERED.

2 HERE, THE PARTIES AGREE CIARA NEWTON FILED HER CHARGE WITH
3 THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING ON MAY 24TH. A
4 CHARGE IS TIMELY IF IT IS FILED BY THE DEADLINE, THAT IS,
5 WITHIN ONE YEAR OF THE DATE ON WHICH THE CONDUCT OCCURRED THAT
6 CIARA NEWTON CONTENDS WAS HARASSING CONDUCT.

7 BECAUSE OF THAT FILING DATE, DEFENDANT ARGUES THAT
8 HARASSING CONDUCT THAT OCCURRED EARLIER THAN MAY 23RD, 2016
9 CANNOT BE CONSIDERED WITH RESPECT TO THIS COUNT.

10 **MS. SMALLETS:** OR IN EVALUATING -- OKAY.

11 **THE COURT:** PLAINTIFF DISAGREES. CIARA NEWTON ARGUES
12 THAT THE HARASSING CONDUCT BEFORE MAY 23RD, 2016 WAS A
13 CONTINUING VIOLATION.

14 **MR. LAFAYETTE:** YES.

15 **THE COURT:** AND THEN I READ THE NEXT TWO PARAGRAPHS
16 AND I DELETE THE LAST TWO.

17 BECAUSE I THOUGHT WHAT WE WERE TALKING ABOUT IS THEY WERE
18 ATTEMPTING TO GET THE ENTIRE THING --

19 **MS. SMALLETS:** RIGHT.

20 **THE COURT:** -- ELIMINATED.

21 **MR. LAFAYETTE:** I THINK THAT'S RIGHT.

22 **MS. SMALLETS:** I THINK THAT'S RIGHT.

23 **THE COURT:** OKAY GREAT. SO WE WILL REDO THAT IN THAT
24 MANNER.

25 I SHOULD JUST NOTE ON THE PRIOR PAGE SO THAT YOU KNOW,

1 DESPITE MY ABHORRENCE OF SPLITTING INFINITIVES, I WILL LIKELY
2 SPLIT THEM ON THAT PAGE.

3 ALL RIGHT. SECOND CLAIM PAGE 5. ANY COMMENTS?

4 **MR. LAFAYETTE:** NO, YOUR HONOR.

5 **MS. SMALLETS:** NO, YOUR HONOR.

6 **THE COURT:** THIRD CLAIM, PAGE 6.

7 **MR. LAFAYETTE:** I HAVE ONE, YOUR HONOR.

8 **THE COURT:** OKAY.

9 **MR. LAFAYETTE:** IT'S AT SUBPARAGRAPH (B) DOWN BELOW.

10 **THE COURT:** OKAY.

11 **MR. LAFAYETTE:** "THAT SHE PROVIDED SUFFICIENT
12 INFORMATION TO GIVE DEFENDANT REASONABLE CAUSE TO BELIEVE THAT
13 SHE WAS COMPLAINING OF GENDER DISCRIMINATION OR HARASSMENT."

14 I DON'T THINK THAT'S PART OF THE CACI, AND I THINK IT SORT
15 OF BECOMES ARGUMENT. THAT'S WHAT PLAINTIFF'S ARGUMENT IS.

16 **THE COURT:** THE PROBLEM IS IS THAT SHE DOESN'T HAVE
17 TO USE MAGIC WORDS AND I DON'T USE THAT PHRASE, BUT THE JURY
18 GETS TO DECIDE WHETHER THE COMPLAINTS WERE SUFFICIENT TO PUT
19 THEM ON NOTICE. AND THE ONLY OBJECTIVE STANDARD IS THE
20 REASONABLENESS STANDARD.

21 **MR. LAFAYETTE:** I WOULD SAY, YOUR HONOR, THAT THE LAW
22 IS CLEAR, I THINK THAT IT HAS TO BE A PROTESTATION OF
23 DISCRIMINATION. AND WHAT WE HAVE HERE IS SOMETHING
24 DIFFERENT -- I WOULD ARGUE. WHEN I ARGUE, I WILL ARGUE
25 SOMETHING DIFFERENT.

1 BUT I THINK IF WE STUCK WITH THE CACI, THAT DOESN'T MEAN
2 THAT PLAINTIFF IS PRECLUDED FROM ARGUING THAT THEY KNEW OR
3 SHOULD HAVE KNOWN, OR THERE'S EVIDENCE THAT INDICATES THAT
4 THEY KNEW WHAT THIS WAS. SHE'S STILL IN A POSITION TO ARGUE
5 THAT.

6 AND I THINK THAT'S WHERE THE LAW IS AS OPPOSED TO SORT
7 OF -- AS OPPOSED TO THIS. I DON'T THINK THAT IS WHERE THE LAW
8 IS. I THINK THAT CREATES A LEGAL STANDARD NOW WHERE IF I
9 WALKED IN AND SIMPLY SAID I THINK I'M BEING TREATED
10 DIFFERENTLY, IT'S AUTOMATICALLY PRESUMED IT HAS TO BE BECAUSE
11 OF MY RACE.

12 THAT'S THE ISSUE THAT I HAVE A PROBLEM WITH. BECAUSE IT
13 MEANS THAT ANYBODY WHO EVER MAKES A COMPLAINT IN THE WORKPLACE
14 NOW BECAUSE WE ARE ALL PROTECTED IN ONE GROUP OR ANOTHER,
15 THAT'S WHAT IT WOULD ALWAYS WIND UP BEING, AND I THINK THAT
16 WOULD BE WRONG.

17 **MS. SMALLETS:** YOUR HONOR, MY INTERPRETATION OF THIS
18 LANGUAGE IS THAT IT DOESN'T SAY THAT AS ALL. IT SAYS SHE
19 PROVIDED SUFFICIENT INFORMATION TO GIVE DEFENDANT REASONABLE
20 CAUSE TO BELIEVE. IT'S NOT TALKING ABOUT HER SUBJECTIVE
21 INTENT. AND I BELIEVE THAT IS THE LAW. THAT'S YANOWITZ. AND
22 I THINK THE SUPREME COURT HAS BEEN VERY CLEAR ON THIS.

23 **THE COURT:** OKAY. ANYTHING ELSE YOU WANT ME TO
24 CONSIDER? I'LL GO BACK AND LOOK AT THESE ISSUES, BUT YOU'RE
25 NOT GOING TO AGREE, SO I'M JUST GOING TO MAKE A CALL.

1 IS THERE ANYTHING ELSE YOU WANT ME TO THINK ABOUT WHEN I
2 GO BACK?

3 **MR. LAFAYETTE:** NO, YOUR HONOR.

4 **MS. SMALLETS:** NO, YOUR HONOR.

5 **THE COURT:** OKAY.

6 SO THEN PAGE 7, WHICH IS -- AGAIN, ONE OF THE REASONS WHY
7 I RESTRUCTURED SOME OF THIS IS BECAUSE IT SEEMS TO ME A LITTLE
8 BIT CRAZY THAT THE INSTRUCTIONS DEFINE "SUBSTANTIAL MOTIVATING
9 REASON" AND "SUBSTANTIAL FACTOR". I DON'T WANT THE JURY TO
10 THINK THAT THERE'S SOME HUGE DIFFERENCE, WHICH IS WHY I MADE
11 THE COMPARISON IN THERE BECAUSE I THINK THAT THEY ARE
12 RELATIVELY CLOSE, BUT, IN ANY EVENT, THIS INSTRUCTION, AGAIN,
13 WOULD ONLY APPLY TO THE SECOND AND THIRD CLAIMS WHICH IS WHY
14 IT'S HERE.

15 ANY COMMENTS ON PAGE 7?

16 **MS. SMALLETS:** YES, YOUR HONOR.

17 **MR. LAFAYETTE:** I HAD A COMMENT, YOUR HONOR, WITH
18 REGARD TO THE LAST STATEMENT IN PARAGRAPH 7. I THINK THAT
19 AMOUNTS TO ARGUMENT, THE LACK OF A VIGOROUS INVESTIGATION.

20 YOU COULD FIND THAT THERE IS -- THE LAW SAYS THAT WE HAVE
21 TO TAKE IMMEDIATE CORRECTIVE ACTION. THAT'S WHAT THE LAW
22 SAYS.

23 NOW, THE LAW DOESN'T SAY I HAVE TO ALWAYS INVESTIGATE, NOR
24 DOES IT SAY THAT I HAVE TO VIGOROUSLY INVESTIGATE. AND IF I
25 DON'T, THEN THAT'S EVIDENCE OF DISCRIMINATORY BIAS. THAT

1 WOULD CREATE A BURDEN IN THE WORKPLACE THAT WOULD BECOME AN
2 UNREAL BURDEN; THAT EVERY TIME SOMEONE MAKES ANY COMPLAINT, I
3 HAVE TO TAKE A VIGOROUS INVESTIGATION. AND IN THE ABSENCE OF
4 A VIGOROUS INVESTIGATION, I'M PRESUMED TO BE BIASED.

5 THAT, I THINK, IS A MISSTATEMENT OF THE LAW. AND I THINK
6 THAT'S ARGUMENT.

7 **MS. SMALLETS:** YOUR HONOR, I BELIEVE THAT THIS
8 ACCURATELY CAPTURES THE LAW. IT'S FROM *MENDOZA VERSUS WESTERN*
9 *MEDICAL CENTER*. AND I THINK IT'S IMPORTANT TO INCLUDE HERE
10 BECAUSE THE LAW IS CLEAR THAT THAT IS ACTUALLY EVIDENCE, AND
11 IT'S NOT SOMETHING THAT A JURY MAY NECESSARILY APPRECIATE,
12 THAT THAT'S SOMETHING THAT THEY WOULD BE ENTITLED TO CONSIDER.
13 SO I THINK IT'S IMPORTANT THAT THEY BE TOLD THAT.

14 **THE COURT:** I DON'T THINK THIS IS OBVIOUS, WHICH IS
15 WHY I INCLUDED IT. IF I INCLUDE SOMETHING TO THIS EFFECT,
16 WHAT RECOMMENDED -- AND YOUR OBJECTION IS NOTED TO INCLUDING
17 IT AT ALL. TO THE EXTENT THAT I DO INCLUDE IT, DO YOU HAVE
18 ANY RECOMMENDED CHANGES?

19 **MR. LAFAYETTE:** THE VIGOROUS --

20 **THE COURT:** YOU MEAN RIGOROUS?

21 **MR. LAFAYETTE:** RIGOROUS, YES. I CAN SOMETIMES BE A
22 BIT DYSLECTIC I HAVE COME TO REALIZE, AND I SEE THINGS ONE
23 WAY.

24 I THINK THAT THAT IS ARGUMENT BECAUSE -- SO MY FIRST
25 CONCERN, AND I THINK YOU'VE NOTED THAT, IS THAT I OBJECT TO IT

1 AT ALL. BUT THEN WHEN WE USE THE WORD -- LET ME TAKE A LOOK
2 AT IT AND GET IT RIGHT -- RIGOROUS --

3 **THE COURT:** I SEE IT.

4 **MR. LAFAYETTE:** OKAY.

5 **THE COURT:** ALL RIGHT. ANYTHING ELSE?

6 **MR. LAFAYETTE:** ONLY THING -- I TRY A LOT OF CASES
7 AND I HAVE NEVER HAD THAT IN ONE OF MY INSTRUCTIONS IN ANY OF
8 THE OTHER CASES I HAVE EVER HAD AS TO THAT BEING AN ELEMENT
9 HERE.

10 **THE COURT:** THAT DOESN'T HELP ME. YOU KNOW, YOU KNOW
11 HOW MANY LAWYERS HAVE SAID, BUT, JUDGE, SO AND SO JUDGE DOES
12 IT OR DOESN'T DO IT. IT'S LIKE, YEAH. THEN I GO TALK TO THE
13 JUDGE AND THEY'RE LIKE --

14 **MR. LAFAYETTE:** I UNDERSTAND, YOUR HONOR.

15 **THE COURT:** IF YOU HAVE SOME CASE CITE, THAT I WILL
16 LOOK AT. REFERENCING OTHER JUDGES DOESN'T ALWAYS HELP.

17 OKAY. NEXT PAGE, FOURTH CLAIM.

18 **MR. LAFAYETTE:** PAGE 8, NOTHING FROM ME, YOUR HONOR.

19 **MS. SMALLETS:** NOTHING, YOUR HONOR.

20 **THE COURT:** ALL RIGHT. PAGE 9.

21 **MS. SMALLETS:** YES, YOUR HONOR.

22 ON ELEMENT -- BULLET POINT NO. 2, WE WOULD REQUEST THAT IT
23 READ: THE DEFENDANT BELIEVED THAT CIARA NEWTON HAD DISCLOSED
24 OR MIGHT DISCLOSE TO A PERSON WITH AUTHORITY OVER HER SHELL'S
25 FAILURE TO REPORT THE ACID SPILL AND/OR TO FOLLOW LEGALLY

1 REQUIRED SAFETY PROCEDURES.

2 I THINK AS THE EVIDENCE HAS COME IN, THAT BETTER TRACKS
3 HOW THE EVIDENCE MATCHES WHAT WE ARE REQUIRED TO PROVE FOR
4 THIS CAUSE OF ACTION.

5 **MR. LAFAYETTE:** I'M ACTUALLY GOING BACK TO WHAT I
6 THINK THE STATUTE SAYS. SHE HAS TO STATE THAT SHE
7 DISCLOSED --

8 **THE COURT:** LET ME WRITE DOWN HER REQUEST AND THEN
9 I'LL GET TO YOU IN JUST A MINUTE.

10 (PAUSE IN THE PROCEEDINGS.)

11 SO I'VE GOT THEIR REQUEST. WHAT IS YOUR REQUEST?

12 **MR. LAFAYETTE:** I PROBABLY NEED TO HEAR THEIR
13 REQUEST.

14 **THE COURT:** WHAT I WROTE DOWN IS, NO. 2 -- JUST A
15 MINUTE.

16 WHAT I WROTE DOWN WITH RESPECT TO NO. 2 IS: THE DEFENDANT
17 BELIEVED THAT CIARA NEWTON HAD DISCLOSED OR MIGHT DISCLOSE TO
18 A PERSON WITH AUTHORITY OVER HER SHELL'S FAILURE TO REPORT THE
19 ACID SPILL OR FOLLOW LEGALLY REQUIRED SAFETY PROCEDURES.

20 **MR. LAFAYETTE:** I THINK WHAT THIS SHOULD BE SAYING,
21 SHE REPORTED SOMETHING THAT SHE REASONABLY -- THAT SHE
22 BELIEVED WAS A VIOLATION OF STATE OR FEDERAL LAW.

23 BUT I THINK WE COULD STICK WITH IT AS AN ACID SPILL. I'M
24 FINE WITH THAT.

25 **THE COURT:** WELL, THEY ARE ASKING FOR A CHANGE NOW.

1 LET ME -- I'M GOING TO TAKE A LOOK AT THE CACI 4604.

2 **MS. SMALLETS:** YOUR HONOR, WE ARE ALSO FINE WITH
3 DEFENDANT'S ALTERNATE PROPOSAL. WE THINK THE ACID SPILL IS
4 NOT AN ADEQUATE CAPTURE OF WHAT'S GOING ON, BUT WE HAVE NO
5 OBJECTION TO WHAT MR. LAFAYETTE JUST PROPOSED.

6 (PAUSE IN THE PROCEEDINGS.)

7 **MR. LAFAYETTE:** LET ME SEE WHAT I AM DOING HERE.

8 **THE COURT:** OKAY. WELL, THAT IS... THAT IS THE --
9 IT'S FROM 4603 NOT 4604. BUT... ISN'T THAT -- THAT'S ELEMENT
10 THREE, ISN'T IT?

11 SO 4603 SAYS THAT DEFENDANT BELIEVED THAT PLAINTIFF HAD
12 DISCLOSED OR MIGHT DISCLOSE TO A GOVERNMENT AGENCY, LAW
13 ENFORCEMENT AGENCY, OR PERSON WITH AUTHORITY OVER HER, OR AN
14 EMPLOYEE WITH AN AUTHORITY TO INVESTIGATE, DISCOVER, OR
15 CORRECT LEGAL VIOLATIONS OR NONCOMPLIANCE THAT, AND THEN IT
16 SAYS, SPECIFY INFORMATION DISCLOSED.

17 **MR. LAFAYETTE:** ACID SPILL.

18 **MS. SMALLETS:** WELL, THE PROBLEM IS I DON'T THINK
19 THAT'S THE ONLY THING AT ISSUE AT THIS POINT IN TIME. IT'S
20 NOT JUST THE ACID SPILL, IT'S SHELL'S FAILURE TO PROPERLY
21 DOCUMENT AND REPORT THE ACID SPILL AND ALSO THE OSHA --
22 POTENTIAL OSHA VIOLATIONS HAVE ALL COME INTO EVIDENCE.

23 SO IT'S NOT SIMPLY THE ACID SPILL, IT'S THAT WHAT
24 MS. NEWTON BELIEVED IS THAT THE ACID SPILL TRIGGERED REPORTING
25 OBLIGATIONS.

1 **THE COURT:** WHAT ABOUT --

2 **MS. SMALLETS:** WE COULD SAY --

3 **THE COURT:** HOW ABOUT ALLEGED VIOLATIONS WITH RESPECT
4 TO THE ACID SPILL? WHAT ABOUT THAT?

5 **MR. LAFAYETTE:** THAT'S FINE, YOUR HONOR.

6 **MS. SMALLETS:** THAT'S FINE.

7 **THE COURT:** OKAY.

8 SO IT'S GOING TO READ, SO WE ARE ALL ON THE SAME PAGE.

9 NO. 2 WILL READ: THAT DEFENDANT BELIEVES CIARA NEWTON HAD
10 DISCLOSED OR MIGHT DISCLOSE TO A PERSON WITH AUTHORITY OVER
11 HER ALLEGED VIOLATIONS WITH RESPECT TO THE ACID SPILL.

12 **MS. SMALLETS:** YEAH.

13 **MR. LAFAYETTE:** YES.

14 **THE COURT:** OKAY. NEXT ON PAGE 9.

15 **MS. SMALLETS:** THE ONLY THING IS I THINK THE NEXT
16 PARAGRAPH SHOULD SAY, INFORMATION, NOT POLICIES.

17 **THE COURT:** THE NEXT?

18 **MS. SMALLETS:** PARAGRAPH, I THINK IT SHOULD SAY
19 INFORMATION, NOT POLICIES --

20 **THE COURT:** NO. 3 SAYS INFORMATION.

21 **MS. SMALLETS:** I'M SORRY. NOT IN THE BULLET POINT,
22 IT LISTS THE FULL PARAGRAPH.

23 **THE COURT:** THE DISCLOSURES OF -- THE DISCLOSURE OF
24 INFORMATION?

25 **MS. SMALLETS:** YES. AND THE SAME ON THE LAST LINE OF

1 THAT PARAGRAPH.

2 **THE COURT:** I WAS TRACKING 4603. 4603 SAYS
3 "POLICIES" THAT'S ALL.

4 **MS. SMALLETS:** I JUST THINK THAT WE ARE NOT SAYING
5 THAT THERE'S NO ALLEGATION SHE WAS DISCLOSING POLICIES. WHAT
6 SHE WAS DISCLOSING WAS INFORMATION.

7 **MR. LAFAYETTE:** ARE YOU LOOKING AT PARAGRAPH 5?

8 **MS. SMALLETS:** I'M LOOKING AT THE FULL PARAGRAPH
9 AFTER THE BULLET POINTED LIST.

10 **THE COURT:** FULL PARAGRAPH AFTER THE ELEMENTS.

11 (PAUSE IN THE PROCEEDINGS.)

12 WELL, THE POLICIES -- IT'S INTERESTING. THE PROBLEM
13 WASN'T THE POLICIES. THE POLICIES WERE ACTUALLY -- SHELL'S
14 POLICIES WERE ACTUALLY ACCURATE.

15 **MS. SMALLETS:** RIGHT. SHE'S DISCLOSING A VIOLATION
16 OF THEIR POLICIES.

17 **THE COURT:** DO I EVEN NEED THIS PARAGRAPH?

18 **MR. LAFAYETTE:** OUR POLICIES CAN'T BE A VIOLATION --
19 OUR POLICIES CAN'T --

20 **THE COURT:** DO I EVEN NEED THIS PARAGRAPH? BECAUSE
21 SHE'S NOT --

22 **MS. SMALLETS:** NO.

23 **THE COURT:** I MEAN IT IS BRACKETED IN THE --

24 **MR. LAFAYETTE:** I DON'T THINK YOU NEED THAT.

25 **THE COURT:** YOU BOTH AGREE I CAN TAKE IT OUT?

1 **MR. LAFAYETTE:** YES.

2 **MS. SMALLETS:** YEAH, WE ARE FINE.

3 **THE COURT:** IT'S DELETED.

4 ALL RIGHT. ANYTHING ELSE ON 9?

5 **MS. SMALLETS:** NO, YOUR HONOR.

6 **THE COURT:** MR. LAFAYETTE?

7 **MR. LAFAYETTE:** NO, YOUR HONOR.

8 **THE COURT:** ALL RIGHT. PAGE 10.

9 **MR. LAFAYETTE:** NO, YOUR HONOR.

10 **MS. SMALLETS:** NO, YOUR HONOR.

11 **THE COURT:** SO THEN MY DISCUSSION FROM BEFORE; ARE WE
12 GOING STRAIGHT INTO DAMAGES IN THIS PHASE?

13 **MS. SMALLETS:** YOUR HONOR, WE HAD AN OPPORTUNITY TO
14 THINK ABOUT IT AND WE ACTUALLY THINK THAT YOUR PROPOSAL TO
15 STOP AT THIS POINT IN TIME MAKES A LOT OF SENSE AND WILL MAKE
16 THINGS -- MAKE MUCH MORE SENSE FOR THE JURY.

17 **MR. LAFAYETTE:** I GUESS... I THINK WHAT I AM HEARING
18 IS WE WILL ARGUE DAMAGES, BUT THEY WON'T GET DAMAGES UNTIL
19 AFTER THEY FIND LIABILITY.

20 **THE COURT:** WE WOULDN'T ARGUE DAMAGES OR DO DAMAGES
21 UNTIL THEY SAID THAT YOU DID SOMETHING WRONG.

22 **MR. LAFAYETTE:** OKAY.

23 **MS. NUGENT:** SO IN THE CLOSING WE ARE NOT DOING -- I
24 UNDERSTAND PUNITIVES ARE FAR DOWN THE LINE, BUT WE ARE STILL
25 DOING LIABILITY AND PUTTING THE NUMBERS UP.

1 **THE COURT:** IF YOU WANT TO DO THAT, THEN WHY WOULDN'T
2 I INSTRUCT ON THAT?

3 **MS. NUGENT:** OKAY. SO THEY COME BACK FROM
4 LIABILITY -- AND IF THERE IS LIABILITY THEN WE --

5 **THE COURT:** ARGUE.

6 **MS. NUGENT:** -- ARGUE THE NUMBERS. AND THEN THEY --
7 (SIMULTANEOUS COLLOQUY.)

8 **THE COURT:** I WANT TO MAKE SURE MR. LAFAYETTE IS
9 HEARING SO WE ARE ALL ON THE SAME PAGE.

10 I DON'T THINK YOU SHOULD BE ARGUING ON SOMETHING I'M NOT
11 INSTRUCTING ON. AND, FRANKLY, I DON'T CARE ONE WAY OR THE
12 OTHER, IT DOESN'T MATTER TO ME ON THIS TOPIC.

13 IT WAS PRIMARILY BECAUSE -- THE REASON I WAS REFERENCING
14 IT IN THIS PARTICULAR CASE IS BECAUSE ON PAGE 14, THE
15 AVOIDABLE CONSEQUENCES DOCTRINE ONLY APPLIES IF THEY FIND
16 LIABILITY ON THE FIRST CLAIM. SO IF I GOT A VERDICT THAT HAD
17 NO LIABILITY ON THE FIRST CLAIM, I WOULD NEVER GIVE THIS
18 INSTRUCTION.

19 THEN THE SAME THING FOR THE NEXT PAGE, PAGE 15, ONLY
20 APPLIES TO THE SECOND AND THIRD CLAIM. SO IF THERE IS NO
21 FINDING OF LIABILITY, IT NEVER GETS -- THEY NEVER GET
22 INSTRUCTED ON IT.

23 THAT'S WHY I WAS SUGGESTING TO DO IT.

24 **MR. LAFAYETTE:** I THINK MY -- MY GUT TELLS ME WE
25 SHOULD DO IT, WE SHOULD HAVE IT IN THERE.

1 **MS. SMALLETS:** WE THINK THAT YOUR PROPOSAL TO STOP,
2 DO LIABILITY, AND THEN DO THESE DAMAGES WITH THESE AFFIRMATIVE
3 DEFENSES MAKES SENSE. I THINK IT WILL BE EASIER AND SIMPLER
4 FOR THE JURY AND PREVENT CONFUSION.

5 **THE COURT:** OKAY. SO WHAT I WILL ALSO THEN DO,
6 THOUGH, IF THERE IS ANY FINDING OF LIABILITY WE WILL DO
7 DAMAGES AND PUNITIVE CONDUCT. NOT PUNITIVE DAMAGES, BUT
8 PUNITIVE CONDUCT. SO I WILL GROUP THOSE TWO THINGS TOGETHER.

9 **MR. LAFAYETTE:** WHEN I -- I GUESS WHAT I AM TRYING TO
10 SAY IS, I THINK THAT THE INSTRUCTIONS FOR THE AVOIDABLE
11 CONSEQUENCES DOCTRINE SHOULD BE GIVEN AND WE SHOULD ARGUE
12 DAMAGES BECAUSE DAMAGES ARE AN ELEMENT OF LIABILITY. AND
13 SO --

14 **THE COURT:** SO YOU DON'T WANT TO STOP?

15 **MR. LAFAYETTE:** I DON'T WANT TO STOP. THAT'S WHAT
16 I'M TRYING TO SAY. I WAS NOT CLEAR.

17 **THE COURT:** YOU SAID IT OPPOSITE LAST TIME.

18 **MR. LAFAYETTE:** OKAY.

19 **THE COURT:** WELL, IS IT -- IT'S NOT -- IF I LOOK AT
20 THE ELEMENTS, IT'S NOT AN ELEMENT. HARM IS AN ELEMENT, BUT
21 THE AMOUNT OF DAMAGES ISN'T.

22 **MR. LAFAYETTE:** IN -- IN THESE CASES, A LOT OF TIMES
23 THE HARM ISN'T THE DAMAGES TO THE PLAINTIFF, IT'S THE FEE
24 SHIFTING ISSUE.

25 **THE COURT:** YOU CAN'T TALK ABOUT FEE SHIFTING.

1 **MR. LAFAYETTE:** I KNOW I CAN'T. BUT WHAT HAPPENS
2 IS -- I JUST THINK STRATEGICALLY, IF YOU ARE THE DEFENSE, YOU
3 WANT THE DAMAGES WITH THE LIABILITY PHASE OF THE CASE.
4 IT'S -- IT'S -- AND THAT IS WHAT I'M SAYING IS GUT.

5 I CAN'T TELL YOU, YOUR HONOR, THAT THERE'S SOMETHING, A
6 TREATISE OR ANYTHING THAT I CAN RELY UPON AND SAY THAT. IT'S
7 JUST SOMETHING THAT I FEEL.

8 **THE COURT:** DO YOU CARE?

9 **MS. SMALLETS:** YOUR HONOR, WE DO THINK THAT THIS
10 WOULD BE -- THE WAY YOU PROPOSED IT EARLIER OR YESTERDAY AND
11 EXPLAINED IT EARLIER TODAY, MAKES SENSE.

12 I THINK THAT THERE ARE TWO -- THE INSTRUCTIONS ARE ALREADY
13 FAIRLY COMPLICATED AND TECHNICAL, AS IT IS IN ALL EMPLOYMENT
14 CASES, AND THAT WE HAVE TWO DEFENSES THAT GO NOT TO LIABILITY
15 BUT TO DAMAGES, AND I THINK IT MAKES SENSE TO SEPARATE THAT
16 OUT AND LET THE JURY FIND LIABILITY, IF THEY ARE GOING TO, AND
17 DECIDE DAMAGES AFTERWARD.

18 **THE COURT:** I AM CONCERNED ABOUT THE SHIFTING. IT'S
19 HARD FOR A JURY TO COMPARTMENTALIZE THESE THINGS. THEY ARE
20 NOT JUDGES. SO I AM GOING TO BIFURCATE IT OUT.

21 NOW, IF YOU WANT TO MENTION DAMAGES IN YOUR ARGUMENT, I
22 WON'T STOP YOU.

23 **MR. LAFAYETTE:** ALL RIGHT, YOUR HONOR.

24 **THE COURT:** SO YOU CAN ARGUE IT AND YOU CAN LET THEM
25 KNOW THAT THAT WOULD BE ANOTHER PHASE. KNOWING -- YOU KNOW,

1 JURORS AREN'T DUMB. THEY KNOW IF THEY FIND LIABILITY, THEY
2 ARE GOING TO GET TO DAMAGES, BUT THEN IT WOULD AT LEAST BREAK
3 UP THE INSTRUCTIONS.

4 SO, YOU CAN CHOOSE WHETHER OR NOT YOU WANT TO RAISE
5 DAMAGES IN THE FIRST INSTANCE. SO I WON'T STOP YOU FROM
6 ARGUING IT, BUT I WILL INSTRUCT THEM SEPARATELY SO THAT THEY
7 UNDERSTAND THE SHIFT.

8 **MS. SMALLETS:** YOUR HONOR, THE TIME, JUST SO WE KNOW
9 SO WE CAN PLAN, THE TIME FOR THE CLOSING ARGUMENT IS?

10 **THE COURT:** SO YOU GET WHATEVER TIME YOU'RE TAKING.
11 YOUR HOUR RELATES TO LIABILITY AND DAMAGES.

12 **MS. SMALLETS:** OKAY.

13 **THE COURT:** PUNITIVES IS ON ME. OKAY?

14 **MR. LAFAYETTE:** I THINK I UNDERSTAND, YOUR HONOR.

15 **THE COURT:** I'LL GO OVER IT AGAIN.

16 WITH RESPECT TO -- I AM GOING TO STOP AT PAGE 10. AFTER
17 PAGE 10, I WILL STOP AND I WILL INVITE EACH OF YOU TO GIVE
18 YOUR CLOSING ARGUMENTS. YOU CAN GIVE YOUR CLOSING ARGUMENTS
19 WITH RESPECT TO DAMAGES AND LIABILITY, IF YOU SO CHOOSE.

20 YOUR TIME LIMITATIONS APPLY TO BOTH DAMAGES AND LIABILITY,
21 BUT I'M NOT GOING TO INSTRUCT THEM ON THE DAMAGES.

22 WHAT I'M GOING TO DO AFTER THAT, IS I'LL CLOSE UP, I'LL
23 SEND THEM IN, AND THEY WILL GIVE US A VERDICT ON LIABILITY.

24 IF THE VERDICT IS IN FAVOR, THEN I WILL INSTRUCT ON THE
25 DAMAGES. AND DEPENDING ON WHICH CLAIMS THEY FOUND IN FAVOR

1 OF, I WILL PROVIDE AFFIRMATIVE DEFENSE INSTRUCTIONS OR NOT,
2 DEPENDING ON WHAT IT IS THEY DO.

3 I WILL GIVE YOU, TO THE EXTENT YOU HAVE ANY TIME LEFT, I
4 WILL LET YOU ARGUE AGAIN ON THE DAMAGES, BUT IT'S ONLY IF YOU
5 HAVE TIME LEFT.

6 I WILL SEND THEM BACK IN. WELL, ACTUALLY, NO. AND I'LL
7 INSTRUCT THEM ON PUNITIVE LIABILITY. SO I'LL ALLOW YOU TO
8 ARGUE PUNITIVE LIABILITY.

9 I WILL SEND THEM BACK IN, THEY WILL GIVE US THEIR ANSWERS
10 ON DAMAGES AND PUNITIVE LIABILITY. IF THEY SAY THERE IS
11 LIABILITY FOR PUNITIVES, THEN I'LL INSTRUCT THEM ON THE LAW
12 FOR HOW THEY CALCULATE THE DAMAGES, YOU CAN HAVE ARGUMENT, AND
13 THEN I WILL SEND THEM BACK IN THE LAST TIME.

14 OKAY. NOW, MOVING TO THE DAMAGES SECTION.

15 ANY COMMENTS ON PAGE 12?

16 **MS. SMALLETS:** OUR ONLY COMMENT ON PAGE 12 IS THE
17 DESCRIPTION OF THE 1102.5 CAUSE OF ACTION. I THOUGHT THAT THE
18 DESCRIPTION THAT YOU HAD PUT ON THE FIRST PAGE WAS CLEARER.
19 SO I WAS HOPING THAT COULD BE REPLICATED.

20 **THE COURT:** MR. LAFAYETTE?

21 **MR. LAFAYETTE:** I THINK WE ARE BOTH TALKING ABOUT THE
22 LAST BULLET POINT DOWN THERE.

23 **THE COURT:** UNDER MULTIPLE THEORIES?

24 **MR. LAFAYETTE:** YES. AND THAT DEFENDANT DISCHARGED
25 HER FOR REPORTING.

1 **THE COURT:** YES. SO SHE'S ASKING THAT I JUST REPEAT
2 WHAT IS ON PAGE 1.

3 **MR. LAFAYETTE:** I WOULD LIKE FOR IT TO BE REPORTING
4 UNLAWFUL CONDUCT WITH REGARD TO THE ACID SPILL.

5 **THE COURT:** DO YOU HAVE A PROBLEM WITH PAGE --
6 PAGE 1? SHE'S JUST ASKING THAT I REPEAT WHAT I HAVE IN THE
7 INTRODUCTION.

8 **MR. LAFAYETTE:** I DO. I THINK THIS SHOULD BE MORE
9 SPECIFIC NOW. BECAUSE THAT'S GENERAL AND NOW IT REALLY DOES
10 HAVE TO BE -- NOW WE ARE TALKING ABOUT CONFLATING TWO ELEMENTS
11 BECAUSE IT'S NOT JUST THE REPORTING. SHE HAS TO HAVE A
12 REASONABLE BELIEF THAT IT'S UNLAWFUL UNDER STATE OR FEDERAL
13 LAW.

14 **THE COURT:** GUYS, ALL I'M TRYING TO DO HERE IS SAY
15 THERE ARE FIVE CLAIMS.

16 **MR. LAFAYETTE:** I'M FINE WITH YOU GOING BACK TO THAT,
17 YOUR HONOR.

18 **THE COURT:** THAT'S ALL I'M DOING.

19 **MR. LAFAYETTE:** OKAY.

20 **THE COURT:** FRANKLY, IF I HAVE A VERDICT FORM... I
21 DON'T EVEN KNOW THAT I NEED ANY OF THE BULLETS BECAUSE THEY
22 WILL HAVE ALREADY EVALUATED ALL OF THEM AND DECIDED.

23 SO I THINK I'LL JUST SAY, AS PREVIOUS -- YOU KNOW, OR
24 MAYBE I WOULD PROBABLY SAY, NOW THAT YOU HAVE DECIDED.

25 **MS. SMALLETS:** YEAH.

1 **THE COURT:** RIGHT? THAT'S REALLY HOW IT WILL WORK.
2 NOW THAT YOU HAVE DECIDED THAT DEFENDANT IS LIABLE TO CIARA
3 NEWTON UNDER, AND THEN I CAN IDENTIFY THE ONES THAT THEY DID.

4 I'LL HAVE TO FIX THE TENSE ON THIS, AND THEN I'LL SHOW IT
5 TO YOU. BUT I DON'T EVEN KNOW THAT I'LL REPEAT BECAUSE THEY
6 HAVE ALREADY GONE THROUGH ALL THE WORK.

7 OKAY. ANYTHING ELSE ON PAGE 12?

8 **MR. LAFAYETTE:** NO, YOUR HONOR.

9 **MS. SMALLETS:** NO, YOUR HONOR.

10 **THE COURT:** PAGE 13?

11 **MR. LAFAYETTE:** NO, YOUR HONOR.

12 **MS. SMALLETS:** NO, YOUR HONOR.

13 **THE COURT:** NOW LET'S DO -- THE ONE THING I MIGHT
14 DO -- HAVE WE GIVEN THEM VERDICT FORMS?

15 **MR. LAFAYETTE:** YES.

16 **THE COURT:** GO TO THE SECOND ONE. NO. I'VE GOT -- I
17 THINK THERE WAS A MISTAKE. WE WERE SCRAMBLING BACK THERE.
18 OH, WAIT. MY MISTAKE. I WILL HAVE TO REDO THIS.

19 GO TO THE LAST PAGE OF THE FIRST ONE. SO MENTAL SUFFERING
20 AND EMOTIONAL DISTRESS APPLIES TO ALL. ECONOMIC LOSS DOES NOT
21 APPLY TO THE FIRST.

22 **MR. LAFAYETTE:** THAT'S CORRECT, YOUR HONOR.

23 **THE COURT:** I'LL HAVE TO ADJUST THIS TO REFLECT THAT,
24 AND I HAVEN'T DONE IT YET. SO THAT'S THE ONE THING THAT I
25 WOULD CHANGE IN THESE INSTRUCTIONS.

1 **MS. SMALLETS:** I THINK IT'S ALREADY IN THERE.

2 **THE COURT:** IT IS NOT REFLECTED IN THE INSTRUCTIONS.

3 **MS. SMALLETS:** SORRY.

4 **THE COURT:** SO I HAVEN'T HAD A CHANCE -- I MEAN, THIS
5 IS -- I'VE BEEN PARALLEL PROCESSING. SO I HAVEN'T HAD A
6 CHANCE TO GO AND COMPARE AGAIN THE INSTRUCTIONS WITH THE FORM,
7 BUT IF I THINK I NEED TO MAKE JUST SOME INTRODUCTORY
8 DISTINCTIONS SO THAT THEY GET IT, I WILL DO THAT. BUT THAT
9 WOULD BE THE ONLY CHANGE I WOULD MAKE TO 13.

10 ANYTHING ELSE ON 13?

11 **MR. LAFAYETTE:** NO, YOUR HONOR.

12 **MS. SMALLETS:** NO, YOUR HONOR.

13 **THE COURT:** HOW ABOUT PAGE 14?

14 **MR. LAFAYETTE:** NO, YOUR HONOR.

15 **MS. SMALLETS:** NO, YOUR HONOR.

16 **THE COURT:** PAGE 15?

17 **MS. SMALLETS:** NO, YOUR HONOR.

18 **MR. LAFAYETTE:** THE PARAGRAPH AFTER SUBPARAGRAPH TWO
19 WHERE IT SAYS, "DEFENDANT DOES NOT MEET ITS BURDEN IF IT" --

20 **THE COURT:** CAN YOU SPEAK UP?

21 **MR. LAFAYETTE:** I'M SORRY.

22 THE PARAGRAPH AFTER PARAGRAPH 2, THE LAST SENTENCE, I
23 THINK --

24 **THE COURT:** CAN YOU TELL ME THE LAST SENTENCE
25 STARTING WHAT?

1 **MR. LAFAYETTE:** DEFENDANT DOES NOT MEET ITS BURDEN.

2 **THE COURT:** OKAY.

3 **MR. LAFAYETTE:** I THINK THAT'S ARGUMENT, AND I DON'T
4 THINK WE NEED THAT.

5 (PAUSE IN THE PROCEEDINGS.)

6 **THE COURT:** WHERE ELSE DO I SAY THAT -- WHERE ELSE DO
7 I SAY THAT? I DON'T UNDERSTAND HOW IT IS ARGUMENT. IT IS
8 EXPLAINING TO THEM THAT PARTIAL IS INSUFFICIENT. I DON'T KNOW
9 WHERE ELSE I SAY THAT.

10 **MR. LAFAYETTE:** I DON'T KNOW IF YOU HAVE TO SAY THAT.
11 THAT'S WHAT I'M SAYING.

12 **THE COURT:** THIS IS A VERY DIFFICULT CONCEPT I THINK
13 FOR JURORS TO UNDERSTAND. SO I THINK IT NEEDS TO BE
14 EXPLAINED. THEY HAVE TO HAVE THE TOOLS TO DECIDE WHICH SIDE
15 WINS ON THIS PARTICULAR TOPIC, RIGHT? SO I DON'T KNOW HOW
16 ELSE THEY KNOW --

17 **MR. LAFAYETTE:** I THINK IF WE GO TO THE FIRST
18 PARAGRAPH WHERE IT SAYS, "THE DEFENDANT MAY AVOID CERTAIN
19 REMEDIES IF IT CAN PROVE BY A PREPONDERANCE OF THE EVIDENCE
20 THAT, UNSATISFACTORY PERFORMANCE WAS ALSO A SUBSTANTIAL
21 MOTIVATING REASON AND, TWO, UNSATISFACTORY PERFORMANCE
22 STANDING ALONE WOULD HAVE CAUSED IT TO TERMINATE CIARA
23 NEWTON."

24 THE "ALONE" WORD IS THE WORD THAT CREATES A BURDEN ON US
25 THAT WE HAVE TO DO THAT. AND SO IN DETERMINING WHETHER

1 UNSATISFACTORY PERFORMANCE WAS ALSO A SUBSTANTIAL MOTIVATING
2 REASON, YOU MUST DETERMINE WHAT ACTUALLY MOTIVATED DEFENDANT
3 AT THE TIME, NOT WHAT IT MIGHT HAVE BEEN JUSTIFIED IN DOING.

4 SO I THINK WHEN YOU READ THE BURDEN THAT YOU'VE
5 ESTABLISHED FOR US UP ABOVE, YOU'VE ALREADY ARTICULATED WHAT
6 IT IS WE HAVE TO DO. TO COME BACK AGAIN AND DO THIS IS TO
7 MAKING THE DEFENSE BURDEN MORE DIFFICULT.

8 **THE COURT:** ALL RIGHT. I'LL THINK ABOUT IT.

9 ANYTHING ELSE ON 15?

10 **MR. LAFAYETTE:** NO, YOUR HONOR.

11 **MS. SMALLETS:** NO, YOUR HONOR. AND WE WOULD REQUEST
12 THE INSTRUCTION REMAIN AS IS.

13 **THE COURT:** ANYTHING ON 16?

14 SO I NEED TO PUT IN HERE WHO PLAINTIFF SAYS ARE MANAGING
15 AGENTS.

16 **MS. SMALLETS:** MIKE BECK, CHRISTINE LAYNE, THOR
17 NYGAARD, TOM RIZZO, AND LORI MARTINELLI.

18 **THE COURT:** MICHAEL BECK, CHRISTINE LAYNE, TOM RIZZO,
19 AND LORI MARTINELLI.

20 **MS. SMALLETS:** AND THOR NYGAARD.

21 **THE COURT:** THOR NYGAARD.

22 SO ARE YOU GOING TO HAVE EVIDENCE ON SOME OF THESE PEOPLE
23 TOMORROW?

24 **MS. SMALLETS:** THERE HAS ALREADY BEEN SOME EVIDENCE
25 ON THESE PEOPLE IN TERMS OF MIKE BECK TESTIFIED TODAY --

1 **THE COURT:** MIKE BECK I GET. CHRISTINE LAYNE I GET.
2 WHAT EVIDENCE DO YOU HAVE WITH RESPECT TO TOM RIZZO?

3 **MS. SMALLETS:** SO, CHRISTINE LAYNE TESTIFIED THAT TOM
4 RIZZO APPROVED THE DECISION. MIKE BECK TESTIFIED TODAY THAT
5 TOM RIZZO RUNS THE ENTIRE FACILITY. AND TOM RIZZO IS COMING
6 ON MONDAY.

7 HE WASN'T ON OUR WITNESS LIST BECAUSE HE WASN'T DISCLOSED
8 AS A DECISION-MAKER IN THE INITIAL DISCLOSURES. WE ARE NOT
9 OBJECTING, BUT THAT'S WHY HE WASN'T ON OUR WITNESS LIST. SO
10 WE WILL ALSO ADDUCE ADDITIONAL INFORMATION AT THAT POINT IN
11 TIME.

12 BUT WHAT WE HAVE SO FAR IS CHRISTINE LAYNE TESTIFIED HE
13 RATIFIED THE DECISION AND MIKE BECK TESTIFIED HE RUNS -- HE'S
14 THE HIGHEST PERSON AT THE MARTINEZ FACILITY.

15 (PAUSE IN THE PROCEEDINGS.)

16 **THE COURT:** THAT'S THE SAME ARGUMENT FOR LORI
17 MARTINELLI AND THOR NYGAARD?

18 **MS. SMALLETS:** ESSENTIALLY. WE HAVE WITNESSES
19 ALREADY WHO TESTIFIED THAT THEY WERE -- THAT THEY RATIFIED AND
20 APPROVED THE DECISION. AND WE ALSO HAVE WITNESS TESTIMONY TO
21 DATE TALKING ABOUT THE SCOPE OF THEIR RESPONSIBILITIES. LORI
22 IS ALSO SCHEDULED -- MS. MARTINELLI IS ALSO SCHEDULED TO
23 TESTIFY, I BELIEVE, TOMORROW. AND WE WILL OBVIOUSLY ELICIT
24 ADDITIONAL TESTIMONY AT THAT POINT IN TIME.

25 **THE COURT:** SO YOU'RE GOING TO ARGUE OR WANT TO ARGUE

1 THAT THEIR RATIFICATION CONSTITUTED MALICE, SUPPRESSION, AND
2 FRAUD?

3 **MS. SMALLETS:** YES, THAT THEY RATIFIED THE DECISION.

4 **THE COURT:** ANYTHING ELSE ON PAGE 16?

5 **MS. SMALLETS:** NO, YOUR HONOR.

6 **THE COURT:** MR. LAFAYETTE?

7 **MR. LAFAYETTE:** NO, YOUR HONOR, NOT ON 16.

8 **THE COURT:** OKAY. HERE IS THE -- FRANCES, CAN YOU
9 GIVE THEM THIS PAGE?

10 (DOCUMENT HANDED TO COUNSEL.)

11 THIS IS THE STANDARD PAGE -- I JUST SPLIT THEM.

12 **THE CLERK:** ARE THEY THE SAME THING?

13 **THE COURT:** THEY ARE THE SAME THING, JUST ONE PAGE.

14 THIS IS A STANDARD CACI 3942.

15 ANY OBJECTIONS?

16 **MR. LAFAYETTE:** NO, YOUR HONOR.

17 **MS. SMALLETS:** NO, YOUR HONOR.

18 **THE COURT:** OKAY. LET'S LOOK AT THE VERDICT FORMS.

19 **MS. SMALLETS:** YOUR HONOR, WE DID HAVE A COUPLE OF
20 COMMENTS ON THE INTRODUCTION. I DON'T KNOW IF YOU WANT TO DO
21 THAT.

22 **THE COURT:** IT IS LESS IMPORTANT TO ME. THE VERDICT
23 FORMS.

24 MY COURT REPORTER IS ABOUT TO KILL ME YOU UNDERSTAND.

25 OKAY. VERDICT FORM FOR THE FIRST SET. SO I WILL BE

1 PUTTING THE DAMAGES IN THE OTHER DOCUMENT. BUT MY VIEW IS,
2 I'M JUST GOING TO ASK ONE QUESTION PER CLAIM. SO YOU MAY HAVE
3 OBJECTIONS, PUT THEM ON THE RECORD. THIS IS THE WAY I'M DOING
4 IT.

5 **MS. SMALLETS:** NO OBJECTIONS, YOUR HONOR.

6 **MR. LAFAYETTE:** NOTHING MORE TO SAY, YOUR HONOR.

7 **THE COURT:** OKAY. ANYTHING ABOUT THE LANGUAGE THAT
8 I'M USING, THAT YOU HAVE ANY COMMENTS ON THE FRAMING OR ANY OF
9 THE CONTENT ON PAGES 2 OR 3?

10 **MS. SMALLETS:** NO, YOUR HONOR.

11 **MR. LAFAYETTE:** JUST A SECOND, YOUR HONOR.

12 (PAUSE IN THE PROCEEDINGS.)

13 **MR. LAFAYETTE:** IF WE GO BACK TO PAGE 9 FOR A SECOND,
14 YOUR HONOR. I THINK I CAN MORE BETTER EXPLAIN WHAT I AM ABOUT
15 TO SAY.

16 AT THE BOTTOM OF THE PAGE ON PAGE 9, THE STATUTE ACTUALLY
17 HAS THIS LANGUAGE IN THERE WHICH IS THERE, WHERE IT SAYS: IF
18 CIARA PROVES -- CIARA NEWTON PROVES THAT HER DISCLOSURE OF AN
19 UNLAWFUL ACT WAS A CONTRIBUTING FACTOR IN DEFENDANT'S DECISION
20 TO TERMINATE HER --

21 **COURT REPORTER:** I'M SORRY.

22 **THE COURT:** SLOW DOWN.

23 **MR. LAFAYETTE:** OKAY. IT BASICALLY HAS DEFENDANT IS
24 NOT LIABLE. NOT TALKING ABOUT DAMAGES NOW, DEFENDANT IS NOT
25 LIABLE IF IT PROVES BY CLEAR AND CONVINCING EVIDENCE THAT IT

1 WOULD HAVE DISCHARGED.

2 SO I'M ASSUMING THAT WHEN WE TAKE THE VERDICT FORM AND WE
3 HAVE NO. 5, THE WHISTLEBLOWER CLAIM, BUILT INTO THE STATUTE IS
4 THIS BURDEN SHIFT THERE.

5 **THE COURT:** SO DO YOU WANT ME TO ADD, DID CIARA
6 NEWTON ESTABLISH HER CLAIM AND DEFENDANT FAIL TO ESTABLISH ITS
7 DEFENSE?

8 **MR. LAFAYETTE:** THAT IS ONE WAY YOU COULD DO IT.
9 THAT IS ONE WAY YOU COULD DO IT.

10 THAT'S FINE, YOUR HONOR.

11 **THE COURT:** THE OTHER WAY TO DO IT IS NOT TO
12 REFERENCE -- IS TO TOTALLY RESTRUCTURE IT AND SAY IS THERE,
13 YOU KNOW, IS THERE LIABILITY FOR THE FIFTH CLAIM.

14 I GUESS IF I DID THAT, I MIGHT BE -- I WOULD RESTRUCTURE
15 ALL OF THEM. IS DEFENDANT LIABLE TO CIARA NEWTON ON THE FIRST
16 CLAIM? IS DEFENDANT LIABLE TO CIARA NEWTON ON THE SECOND
17 CLAIM? IS DEFENDANT LIABLE TO CIARA NEWTON ON THE THIRD
18 CLAIM?

19 **MR. LAFAYETTE:** MAYBE THE WAY YOU PHRASED IT THE
20 FIRST TIME, AND I CAN'T REMEMBER HOW YOU DID IT, BUT IT WAS A
21 CAVEAT THAT I THOUGHT YOU HAD IN THERE FOR THIS ONE, THAT MAY
22 BE THE EASIEST WAY TO DO IT.

23 **THE COURT:** SO DID CIARA NEWTON ESTABLISH HER FIFTH
24 CLAIM FOR WHISTLEBLOWER RETALIATION BY A PREPONDERANCE OF THE
25 EVIDENCE AND DEFENDANT FAIL TO PROVE ITS AFFIRMATIVE DEFENSE

1 BY CLEAR AND CONVINCING EVIDENCE?

2 MR. LAFAYETTE: YES.

3 MS. SMALLETS: THAT'S FINE.

4 THE COURT: OKAY. ANYTHING ELSE ON THIS FORM?

5 MS. SMALLETS: NO, YOUR HONOR.

6 MR. LAFAYETTE: NO, YOUR HONOR.

7 THE COURT: ALL RIGHT. SO THEN THE NEXT FORM WHICH
8 WILL HAVE THE DAMAGES MOVED INTO THIS ONE, AND THEN THE
9 QUESTION WITH RESPECT TO LIABILITY ON PUNITIVES.

10 MS. SMALLETS: NO OBJECTION, YOUR HONOR. NO
11 CONCERNS.

12 MR. LAFAYETTE: NO OBJECTION, YOUR HONOR.

13 THE COURT: ALL RIGHT. AND THEN THE LAST WOULD BE
14 THE AMOUNT OF PUNITIVES.

15 ANY COMMENTS?

16 MS. SMALLETS: NO, YOUR HONOR.

17 MR. LAFAYETTE: NO.

18 THE COURT: SO THEN THE LAST PIECE ARE THE
19 INTRODUCTORY INSTRUCTIONS. THIS IS THE ONE ON THE PLEADING
20 PAPER.

21 YOU SAID YOU HAD COMMENTS.

22 MS. SMALLETS: YES, YOUR HONOR.

23 ON PAGE 2, THE LIST -- THE DESCRIPTION OF THE FIVE CLAIMS,
24 THE SAME ISSUE WITH THE LAST ONE, I THINK, DESCRIBING IT AND
25 THEN A SIMILAR ISSUE ON THE NEXT PAGE. I THINK WHEN YOU TALK

1 ABOUT THE CLEAR AND CONVINCING EVIDENCE --

2 **THE COURT:** I THINK... I THINK WHAT I AM GOING TO
3 DO -- I THINK I WOULD LIKE TO DELETE THAT FROM THIS SECTION
4 AND JUST TALK ABOUT IT WHEN IT MATTERS.

5 **MR. LAFAYETTE:** THAT'S FINE.

6 **THE COURT:** IS THAT ALL RIGHT? THAT WOULD BE MY
7 PREFERENCE. BECAUSE THESE ARE SUPPOSED TO BE GENERIC, SO I
8 THINK, IN GENERAL, THE PREPONDERANCE STANDARD. AND THEN WHEN
9 I GET TO CLEAR AND CONVINCING I'LL EXPLAIN THE STANDARD IN THE
10 RIGHT CONTEXT.

11 **MS. SMALLETS:** RIGHT. I AGREE WITH THAT ESPECIALLY
12 SINCE IN THE CURRENT STUFF THERE IS ONLY ONE PLACE IT COMES
13 UP.

14 **THE COURT:** ANYTHING ELSE?

15 **MR. LAFAYETTE:** NO, YOUR HONOR.

16 **MS. SMALLETS:** NO, YOUR HONOR.

17 **THE COURT:** SO LET ME DOUBLE-CHECK SOMETHING.

18 (PAUSE IN THE PROCEEDINGS.)

19 **MR. LAFAYETTE:** AM I THE ONLY ONE OR IS IT GETTING
20 WARM IN HERE?

21 **THE COURT:** THEY TURN IT ALL OFF AT 4:00.

22 OKAY. I WILL REVISE THESE. YOU MAY NOT, YOU MAY NOT GET
23 THE FINAL UNTIL THIS WEEKEND. BUT YOU HAVE, YOU HAVE THE
24 DRAFT. SO I'LL GET THEM TO YOU AS SOON AS I REASONABLY CAN.

25 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

1 **MS. SMALLETS:** THANK YOU, YOUR HONOR.

2 **THE COURT:** MY PLAN WOULD BE TO INSTRUCT ON MONDAY
3 AND CLOSINGS ON MONDAY.

4 **MS. SMALLETS:** CLOSINGS ON MONDAY?

5 **THE COURT:** CLOSINGS ON MONDAY. WE WILL GO
6 STRAIGHT -- YOU WILL BE DONE GIVEN THE NUMBER OF HOURS YOU
7 HAVE LEFT.

8 **MS. SMALLETS:** ARE WE GOING UNTIL 4:00 ON MONDAY?

9 **THE COURT:** 4:30, WHATEVER. I MEAN, I WANT THEM TO
10 HAVE THIS CASE -- THEY DON'T HAVE TO HAVE TIME TO DELIBERATE,
11 BUT I WANT THEM TO HAVE THE CASE ON MONDAY, AND GO IN THERE
12 AND PICK A FOREPERSON, AND THEN START DELIBERATING ALL DAY
13 TUESDAY. THAT WOULD BE MY PLAN.

14 **MR. LAFAYETTE:** THANKS, YOUR HONOR.

15 **MS. SMALLETS:** THANK YOU, YOUR HONOR.

16 **MR. LAFAYETTE:** JUST SO WE ARE CLEAR, I ADVISED
17 PLAINTIFF'S COUNSEL OF A REVISED WITNESS SCHEDULE TOMORROW TO
18 ACCOMMODATE SOME PEOPLE'S TRAVEL.

19 **MS. SMALLETS:** ALTHOUGH I DON'T BELIEVE YOU FINISHED
20 THAT.

21 **MR. LAFAYETTE:** WHAT'S THAT?

22 **MS. NUGENT:** DO YOU WANT TO PUT IT ON THE RECORD? I
23 TOOK NOTES OF WHAT YOU TOLD US.

24 **THE COURT:** I WOULD LIKE TO KNOW. LET'S GO THROUGH
25 IT. AND THEN WE WILL BE DONE, DIANE.

1 **MR. LAFAYETTE:** AFTER JOSE NAVARRO IN THE MORNING AND
2 RICHARD METCALF, THE FIRST PERSON WE WILL CALL WILL BE RICHARD
3 METCALF SO THAT HE DOESN'T HAVE TO COME BACK AGAIN.

4 **THE COURT:** OKAY.

5 **MR. LAFAYETTE:** AND THEN WE'LL GO FROM THERE TO
6 PATRIK NEUMAN. AND THEN FROM PATRIK NEUMAN TO LORI
7 MARTINELLI. AND THEN FROM HER TO JEFF FISCHER.

8 AND THEN IF WE WORK OUT A DEAL WE WON'T NEED TO CALL THIS
9 PERSON, BUT THE PERSON WHO RAN THE REPORT FOR THE GATE LOGS.
10 I ALSO BUTCHER THIS PERSON'S NAME --

11 **THE COURT:** THAT'S ALL RIGHT. JUST KEEP GOING.

12 **MR. LAFAYETTE:** THEN CAMERON CURRAN, AND THEN IT'S
13 MR. BECK, AND THEN DEANNA MARTINEZ, AND THEN IT WOULD BE TOM
14 RIZZO, AND WE WOULD BE DONE.

15 **THE COURT:** OKAY.

16 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

17 **THE COURT:** THAT'S YOUR UNDERSTANDING?

18 **MS. NUGENT:** YES, IT IS. THANK YOU.

19 **THE COURT:** STAND IN RECESS UNTIL 8:00 A.M. TOMORROW.
20 THANK YOU.

21 **MR. LAFAYETTE:** I'M SORRY, YOUR HONOR. IF I DIDN'T
22 MENTION ERIC PEREZ IT'S BECAUSE I DID JUST SEE IT. BUT ERIC
23 PEREZ IS AFTER KULDEEP AND BEFORE CAMERON CURRAN.

24 **THE COURT:** OKAY. SO YOU ARE NOT CALLING LAYNE BACK?

25 **MR. LAFAYETTE:** AFTER LORI MARTINELLI, LAYNE FOR

1 ABOUT FIVE MINUTES.

2 THE COURT: OKAY. HAVE A GOOD EVENING.

3 MR. LAFAYETTE: THANK YOU, YOUR HONOR.

4 MS. SMALLETS: THANK YOU, YOUR HONOR.

5 THE COURT: THANK YOU.

6
7 (PROCEEDINGS ADJOURNED AT 4:28 P.M.)

8
9 **CERTIFICATE OF REPORTER**

10 I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE
11 UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY
12 CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
13 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

14
15 

16 DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

17 FRIDAY, DECEMBER 14, 2018